

MECHANICS' LIEN LAW OF 1963



GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA
JOINT STATE GOVERNMENT COMMISSION
Harrisburg, Pennsylvania
1964

The Joint State Government Commission was created by Act of 1937, July 1, P. L. 2460, as last amended 1959, December 8, P. L. 1740, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

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MECHANICS' LIENS LAWS

1961-1963

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FOREWORD

The Joint State Government Commission undertook a study to "codify, clarify and simplify" the laws concerning mechanics' liens, in accordance with Senate Concurrent Resolution Serial Number 111, adopted June 29, 1961, which provides:

"The act of June 4, 1901 (P. L. 431), commonly referred to as the "Mechanics' Lien Law," was enacted subsequent to the adoption of the Constitution of the Commonwealth of Pennsylvania in 1874 and in so far as the provisions thereof are not divergent from preexisting law, is not in violation of Article III, Section 7, of the Constitution as a special law. However, many sections and amendments to the act have been held unconstitutional by our Supreme Court.

"There is great confusion with respect to the construction and application of the act and the General Assembly requires for its use comprehensive factual information relating to the laws concerning mechanics' liens so that they may be codified, simplified, and clarified in keeping with the constitutional limitations, as to their construction and application; therefore be it

"RESOLVED (the House of Representatives concurring), That the Joint State Government Commission be directed to study the laws relating to mechanics' liens with a view of codifying, clarifying and simplifying such laws; and be it further

"RESOLVED, That the Joint State Government Commission report to the General Assembly, its findings and recommendations, together with drafts of legislation necessary to carry its recommendations into effect."

A task force was appointed to conduct this study. To aid in the inquiry, the Joint State Government Commission appointed an advisory committee of professionals with experience in this field who reflect the concern of workmen, contractors, materialmen, bonding companies, financial institutions and lending agen-

cies, title insurance companies, and the Pennsylvania Bar Association. In addition, the membership of the advisory committee made available the experience of judges, rural and urban practitioners, and teachers of law.

In considering revision of the Mechanics' Liens Law of 1901, June 4, P. L. 431, as amended, the Joint State Government Commission was faced with insurmountable constitutional limitations, preventing any basic revisions extending or enlarging the lien as to persons or property as it existed prior to the Constitution of 1874.

Any advance upon the law as it stood prior to the Constitution of 1874 was regarded by the courts as invalid as offending against Article III, Section 7 of the Constitution, which provides that "The General Assembly shall not pass any local or special law: Authorizing the creation, extension or impairment of liens: . . . or providing or changing methods for the collection of debts, or the enforcing of judgments, . . ."

Some sections of the Mechanics' Liens Law of 1901 were thus declared unconstitutional as extending the rights of contractors, subcontractors and mechanics and laborers beyond that existing prior to the Constitution of 1874. For example, permitting attachment of the unpaid balance of the contract price in the hands of the owners or permitting a personal judgment against the subcontractor was declared invalid since the lien prior to 1874 was an in rem proceeding and was required to so remain. Subsequent legislation designed to prohibit the unlimited waiver of mechanics' liens by contractors as binding on subcontractors and others was likewise held to be unconstitutional and similar results were reached as to types of property as to which no liens were recognized prior to 1874.

A study of the laws of other states revealed many alternative provisions which could not be considered for Pennsylvania because of constitutional limitations.

The Mechanics' Lien Law of 1963, therefore, represents a codification of the substantive provisions of the law of mechanics' liens within the framework of the Constitution, designed to achieve simplification and clarification in its application. In addition, the act provides that much of the procedure shall be governed by the Pennsylvania Rules of Civil Procedure, promulgated by the Supreme Court, which are set forth in Appendix B.

There is submitted herewith the Mechanics' Lien Law of 1963, together with the Joint State Government Commission's explanatory Comments on each section. In addition, the appendices include the constitutional provisions concerning liens; the Act of 1901, June 4, P. L. 431, as amended; the sections thereof which have been held invalid; cross reference tables relating the Act of 1901 as amended to the Act of 1963; and the applicable Pennsylvania Rules of Civil Procedure.

BAKER ROYER, *Chairman*

*Joint State Government Commission
Capitol Building
Harrisburg, Pennsylvania
1964*

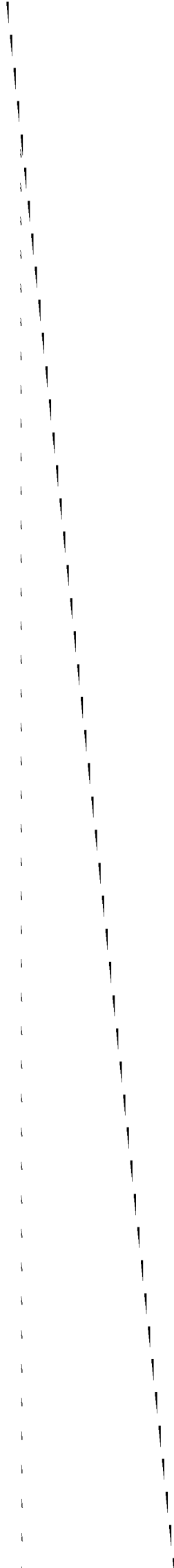


TABLE OF CONTENTS

	PAGE
Foreword	v
Legislative History of Mechanics' Lien Law of 1963 (Act No. 497, 1963, August 24, P. L. 1175)	x
Mechanics' Lien Law of 1963, with Comments	1

Appendices

Appendix A. Act of 1901, June 4, P. L. 431, as Amended..	31
Appendix B. Rules of Civil Procedure Governing Actions upon Mechanics' Liens	67
Appendix C. Text of Sections of Act of 1901, as Amended, Declared Unconstitutional	87
Appendix D. Cross Reference Tables	97

Legislative History of Mechanics'
Lien Law of 1963

SENATE BILL NO. 403

Printer's No. 453

By Messrs. Devlin, Scott, Stroup and Camiel

Referred to Judiciary General, April 17
Reported as committed, June 25
First reading, June 25
Second reading, June 26
Third reading and final passage, June 27
(Vote 50-0)

In the House

Referred to Judiciary, July 1
Reported as committed, July 23
First reading, July 23
Second reading, July 30
Third reading and final passage, August 1
(Vote 203-0)

Approved by the Governor, August 24, 1963

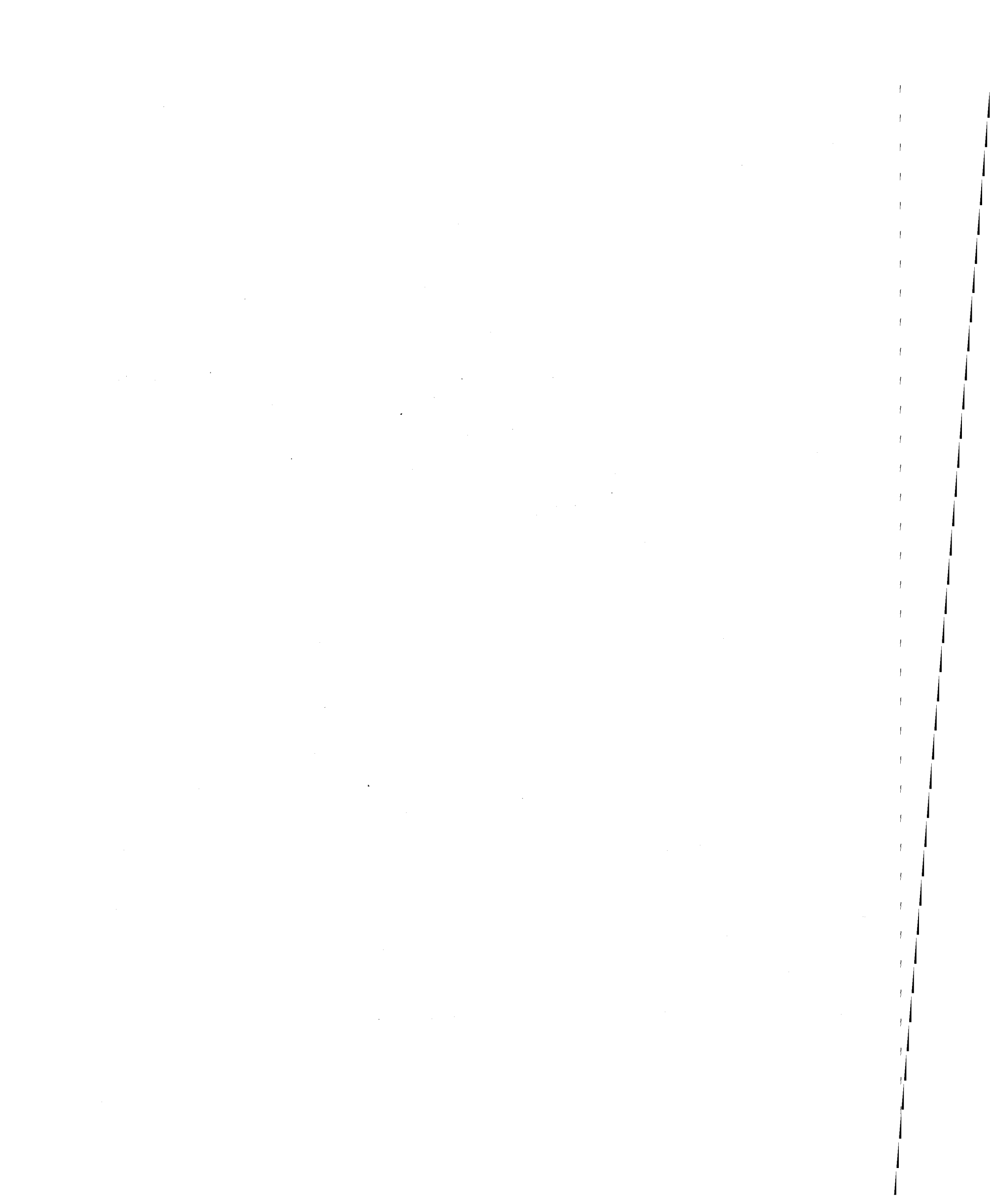
Act No. 497

(1963, August 24, P. L. 1175)

MECHANICS' LIEN LAW OF 1963

(1963, August 24, P.L. 1175)

With Comments



AN ACT

To codify, amend, revise and consolidate the laws relating to mechanics' liens.

PAGE

TABLE OF CONTENTS

ARTICLE I.

SHORT TITLE.

Section 101. Short Title 3

ARTICLE II.

DEFINITIONS.

Section 201. Definitions 3

ARTICLE III.

RIGHT TO LIEN.

Section 301. Right to Lien; Amount 7
Section 302. Presumption as to Use of Materials..... 8
Section 303. Lien Not Allowed in Certain Cases..... 8
Section 304. Excessive Curtilage 9
Section 305. Right to Lien in Case of Noncompletion of
Work 10
Section 306. Consolidation or Apportionment of Claims... 10
Section 307. Removal or Detachment of Improvement Sub-
ject to Claim 11

ARTICLE IV.

WAIVER OF LIEN; EFFECT OF FILING.

Section 401. Waiver of Lien by Claimant..... 11
Section 402. Waiver by Contractor; Effect on Subcontractor 12
Section 403. Release as Waiver 12
Section 404. Effect of Credit or Collateral 12
Section 405. Right of Owner to Limit Claims to Unpaid
Balance of Contract Price 13

Section 406.	Right of Subcontractor to Rescind after Notice of Contract Provisions	13
Section 407.	Contracts Not Made in Good Faith; Effect...	14

ARTICLE V.

FILING AND PERFECTING CLAIM; DISCHARGE OF LIEN.

Section 501.	Notice by Subcontractor as Condition Precedent	14
Section 502.	Filing and Notice of Filing of Claim.....	16
Section 503.	Contents of Claim	17
Section 504.	Amendment of Claim	18
Section 505.	Procedure for Contesting Claim; Preliminary Objections	18
Section 506.	Rule to File Claim	19
Section 507.	Indexing Claims, Et Cetera	19
Section 508.	Priority of Lien	20
Section 509.	Effect of Forfeiture of Leasehold	20
Section 510.	Discharge of Lien on Payment into Court or Entry of Security	20

ARTICLE VI.

DUTIES AND REMEDIES OF OWNER AND CONTRACTOR ON NOTICE OF INTENTION TO FILE OR ON FILING OF CLAIM BY SUBCONTRACTOR.

Section 601.	Owner's Right to Retain Funds of Contractor.	22
Section 602.	Notice to Contractor of Claim	22
Section 603.	Contractor's Duties on Receipt of Notice.....	23
Section 604.	Additional Remedies of Owner	23

ARTICLE VII.

JUDGMENT; EXECUTION; REVIVAL.

Section 701.	Procedure to Obtain Judgment	24
Section 702.	Effect of Judgment on Right to Personal Action	26
Section 703.	Appeal from Judgment	26
Section 704.	Satisfaction of Claims; Penalty for Failure to Satisfy	26

	PAGE
Section 705. Revival of Judgment	27
Section 706. Execution upon Judgment	27

ARTICLE VIII.

SEVERABILITY AND EFFECTIVE DATE.

Section 801. Severability	28
Section 802. Effective Date	28

ARTICLE IX.

REPEALER.

Section 901. Specific Repeal	29
Section 902. General Repeal	29

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

ARTICLE I.

SHORT TITLE.

SECTION 101. Short Title.—This act shall be known and may be cited as the “Mechanics’ Lien Law of 1963.”

ARTICLE II.

DEFINITIONS.

SECTION 201. Definitions. — The following words, terms and phrases when used in this act shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) “Improvement” includes any building, structure or other improvement of whatsoever kind or character erected or constructed on land, together with the fixtures and other personal property used in fitting up and equipping the same for the purpose for which it is intended.

Comment:

Adapted from Section 1, Act of 1901, June 4, P. L. 431, as amended (hereafter referred to as “Act of 1901”) 49 P.S. 1. The detailed enumeration of the types of structure or improvements such as wharves, docks, bulkheads, conduits, coal-breakers, etc., contained in the Act of 1901 is omitted and the phrase “structure or improvement of whatsoever kind and character” which is taken verbatim from Section 1 of the Act of 1901 is adopted as a generic

definition. This is not intended to abridge or to enlarge the right to lien. Similarly, the detailed enumeration of the types of structure and improvements such as sidewalks, yards, fences, walls, and other types of fixtures enumerated in Section 2 of the Act of 1901, 49 P.S. 21 is omitted and is deemed included in the generic definition of "fixtures and other personal property used in fitting up and equipping the same for the purpose for which it is intended."

(2) "Property" means the improvement, the land covered thereby and the lot or curtilage appurtenant thereto belonging to the same legal or equitable owner reasonably needed for the general purposes thereof and forming a part of a single business or residential plant.

Comment:

Adapted from Section 1, Act of 1901, as amended 1929, May 2, P. L. 1255, 49 P.S. 6, which defined property and Section 3, Act of 1901, 49 P.S. 25, which defined curtilage. No attempt is made to define what constitutes a single business or residential plant. This remains a question of fact and previous decisional law will control.

(3) "Owner" means an owner in fee, a tenant for life or years or one having any other estate in or title to property.

Comment:

Adapted from Section 1, Act of 1901, as amended 1929, May 2, P. L. 1255, 49 P.S. 2. The remainder of the section is reincorporated in other sections of this act and its omission here is not intended to change prior law.

(4) "Contractor" means one who, by contract with the owner, express or implied, erects, constructs, alters or repairs an improvement or any part thereof or furnishes labor, skill or superintendence thereto; or supplies or hauls materials, fixtures, machinery or equipment reasonably necessary for and actually used therein; or any or all of the foregoing, whether as superintendent, builder or materialman. The term also includes an architect or engineer who, by contract with the owner, express or implied, in addition to the preparation of drawings, specifications and contract documents also superintends or supervises any such erection, construction, alteration or repair.

Comment:

Adapted from Section 1, Act of 1901, as amended 1929, May 2, P. L. 1255, 49 P.S. 3. The last sentence is intended to declare and clarify existing decisional law. See *Alan Porter Lee, Inc. v. Du-Rite Products Co., Inc.*, 366 Pa. 548 (1951), 79 A. 2d 218.

(5) "Subcontractor" means one who, by contract with the contractor, express or implied, erects, constructs, alters or repairs an improvement or any part thereof; or furnishes labor, skill or superintendence thereto; or supplies or hauls materials, fixtures, machinery or equipment reasonably necessary for and actually used therein; or any or all of the foregoing, whether as superintendent, builder or materialman. The term does not include an architect or engineer who contracts with a contractor or subcontractor, or a person who contracts with a subcontractor or with a materialman.

Comment:

Adapted from Section 1, Act of 1901, as amended 1929, May 2, P. L. 1255, 49 P.S. 4. The last sentence declares and clarifies existing law that a subcontractor of a sub-subcontractor has no right to lien. *Hamilton v. Means*, 155 Pa. Superior Ct. 245, 247 (1944), 38 A. 2d 528. An architect or engineer must contract with the owner under Subsection (4) in order to obtain a lien. He cannot obtain a lien as a subcontractor of a contractor or other subcontractor. Prior decisional law that laborers are not subcontractors, even though employed by a contractor, remains unchanged.

(6) "Claimant" means a contractor or subcontractor who has filed or may file a claim under this act for a lien against property.

Comment:

Taken from Section 1, Act of 1901, 49 P.S. 5.

(7) "Materials" means building materials and supplies of all kinds, and also includes fixtures, machinery and equipment reasonably necessary to and incorporated into the improvement.

Comment:

The Act of 1901 contained no express definition of materials. This definition follows existing law. See Section 1, Act of 1901, as amended 1929, May 2, P. L. 1255, 49 P.S. 4, which used the phrase "reasonably necessary for and actually used therein." The enumeration of the types of fixtures subject to lien contained in Section 2, Act of 1901, 49 P.S. 21, is omitted as unnecessary.

(8) "Completion of the work" means performance of the last of the labor or delivery of the last of the materials required by the terms of the claimant's contract or agreement, whichever last occurs.

Comment:

The Act of 1901 contained no express definition of completion of the work. This definition is adapted from Section 2, Act of 1901, 49 P.S. 23, which used the phrase "completed his work and furnished the last of his materials," and Section 8, Act of 1901, as amended 1909, March 24, P. L. 65, 49 P.S. 101, which used the phrase "when the last work was done or last materials furnished."

(9) "Labor" includes the furnishing of skill or superintendence.

Comment:

The Act of 1901 contained no express definition of labor. Section 1, Act of 1901, *supra*, expressly included as a subcontractor one who furnished "labor, skill or superintends."

(10) "Erection and construction" means the erection and construction of a new improvement or of a substantial addition to an existing improvement or any adaptation of an existing improvement rendering the same fit for a new or distinct use and effecting a material change in the interior or exterior thereof.

Comment:

The Act of 1901 contained no express definition of erection and construction. This definition is adapted in part from Section 3, Act of 1901, 49 P.S. 26, dealing with substantial additions to and adaptation of old structures. No change in the law is intended.

(11) "Alteration and repair" means any alteration or repair of an existing improvement which does not constitute erection or construction as defined herein.

Comment:

The Act of 1901 contained no express definition of alteration and repair. This section is adapted from Sections 2 and 3, Act of 1901, 49 P.S. 21, 26. No change in the law is intended.

(12) "Erection, construction, alteration or repair" includes:

(a) Demolition, removal of improvements, excavation, grading, filling, paving and landscaping, when such work is incidental to the erection, construction, alteration or repair;

(b) Initial fitting up and equipping of the improvement with fixtures, machinery and equipment suitable to the purposes for which the erection, construction, alteration or repair was intended; and

(c) Furnishing, excavating for, laying, relaying, stringing and restringing rails, ties, pipes, poles and wires, whether on the property improved or upon other property, in order to supply services to the improvement.

Comment:

Adapted from Section 2, Act of 1901, 49 P.S. 21. In view of the preceding definitions, the detailed enumeration of the types of buildings, fixtures, and equipment contained in that clause is omitted as unnecessary; this is not intended to abridge or to enlarge the right to lien.

Subsections (a) and (b) are included as a matter of caution, and Subsection (c), taken from the first sentence of Section 2, Act of 1901, is included because it is not specifically covered by preceding definitions or by any other section of the act.

Subsection (a) declares existing decisional law with respect to such work upon the ground as demolition, grading, landscaping which is incidental to the erection, construction, alteration or repair of an improvement, as compared to such work when it is performed independently of any erection, construction, alteration or repair of an improvement, in which latter case no lien is allowed.

(13) "Prothonotary" means the prothonotary of the court or courts of common pleas of the county or counties in which the improvement is situate.

Comment:

Taken from Section 11, Act of 1901, as amended 1905, April 17, P. L. 172, 49 P.S. 53, except that the word "improvement" is substituted for the word "building." No change in the law is intended. Where only the curtilage as distinguished from the building itself extends into another county, Section 502(b) of this act authorizes filing in both counties.

ARTICLE III.

RIGHT TO LIEN.

SECTION 301. Right to Lien; Amount.—Every improvement and the estate or title of the owner in the property shall be subject to a lien, to be perfected as herein provided, for the payment of all debts due by the owner to the contractor or by the contractor to any of his subcontractors for labor or materials furnished in the erection or construction, or the alteration or repair of the improvement, provided that the amount of the claim, other than amounts determined by apportionment under section 306(b) of this act, shall exceed five hundred dollars (\$500).

Comment:

Adapted from Section 2, Act of 1901, 49 P.S. 21, 23, which prohibited claims for alterations or repairs unless the amount exceeded \$100.00. This section increases the limitation to \$500.00 as more realistically related to present economic conditions. It also extends the limitation to new construction as well as alterations and repairs.

A claim under \$500.00 can be speedily disposed of before an alderman or justice of the peace. In Philadelphia, where the jurisdictional limit of the magistrate's court is fixed by the Constitution of 1874 at \$100.00, compulsory arbitration procedures in the County Court provide for speedy disposition of civil actions. While the filing of a mechanics' lien in the case of alteration and repairs affords a lien from date of filing and a lien in a civil action dates only from verdict, the balancing of the equities and the desirability of the free alienation of property justifies increasing the exemption to \$500.00.

SECTION 302. Presumption as to Use of Materials. — Materials for use in or upon an improvement placed on or near the property or delivered to the owner pursuant to a contract shall be presumed to have been used therein in the absence of proof to the contrary.

Comment:

Adapted from Section 3, Act of 1901, 49 P.S. 27, and clarified to indicate that the presumption is rebuttable and not absolute. To the extent that any prior decisions may be in conflict with this principle they are overruled by this section.

SECTION 303. Lien Not Allowed in Certain Cases.—

(a) **Persons Other Than Contractors or Subcontractors.** No lien shall be allowed in favor of any person other than a contractor or subcontractor, as defined herein, even though such person furnishes labor or materials to an improvement.

Comment:

This subsection is new. There is no exact counterpart in the Act of 1901. It declares existing decisional law and for sake of emphasis has been placed in Section 303 as a caveat.

(b) **Public Purpose.** No lien shall be allowed for labor or materials furnished for a purely public purpose.

Comment:

Taken from Section 2, Act of 1901, 49 P.S. 22. The express references of that section exempting property of lunatics, guardians of minors, or trustees, unless the work was undertaken by authority of the court or of

power contained in the deed or will, are omitted as unnecessary since these are matters of general substantive law. The omission of reference to lunatics, minors, and trustees is not intended to effect any change in the law.

(c) Conveyance Prior to Lien. If the property be conveyed in good faith and for a valuable consideration prior to the filing of a claim for alterations or repairs, the lien shall be wholly lost.

Comment:

Taken from Section 13, Act of 1901, 49 P.S. 203, Supp. The provisions of that section of the Act of 1901 which gave priority to mechanics' liens over advance money mortgages were declared unconstitutional, *Page v. Carr*, 232 Pa. 371 (1911), 81 A. 430, and these provisions are therefore omitted from the present act. The provision protecting purchasers in good faith from inchoate, unrecorded liens for alterations and repairs is a salutary provision which is retained.

(d) Leasehold Premises. No lien shall be allowed against the estate of an owner in fee by reason of any consent given by such owner to a tenant to improve the leased premises unless it shall appear in writing signed by such owner that the erection, construction, alteration or repair was in fact for the immediate use and benefit of the owner.

Comment:

Taken from Section 2, Act of 1901, 49 P.S. 24.

(e) Security Interests. No lien shall be allowed for that portion of a debt representing the contract price of any materials against which the claimant holds or has claimed a security interest under the Pennsylvania Uniform Commercial Code or to which he has reserved title or the right to reacquire title.

Comment:

The first part of this subsection, referring to the Uniform Commercial Code, is an adaptation of the Act of 1935, July 12, P. L. 667, 49 P.S. 32, Supp., which makes reference to conditional sales, bailment leases, etc., all of which are supplanted by the Uniform Commercial Code. Prior to the amending Act of 1935, *supra*, the court held that reservation of title and right to remove did not defeat a lien as to fixtures becoming a part of the real estate. *Clayton v. Lienhard*, 312 Pa. 433 (1933), 167 A. 321.

SECTION 304. Excessive Curtilage. — Where an owner objects that a lien has been claimed against more property than should justly be included therein, the court upon petition may, after hearing by deposition or otherwise, limit the boundaries of

the property subject to the lien. Failure to raise this objection preliminarily shall not be a waiver of the right to plead the same as a defense thereafter.

Comment:

Adapted from Section 23, Act of 1901, 49 P.S. 133, and continues the former procedure. The last sentence is added to make clear that failure to object preliminarily will not constitute a waiver.

The omission of express reference to the right of lienholders or persons having an interest in the property to object is not intended to affect such right, which is governed by intervention rules 2326 *et seq.* (Pennsylvania Rules of Civil Procedure.)

SECTION 305. Right to Lien in Case of Noncompletion of Work.—Except in case of destruction by fire or other casualty, where, through no fault of the claimant, the improvement is not completed, the right to lien shall nevertheless exist.

Comment:

Taken from Section 19, Act of 1901, 49 P.S. 79. Section 20, Act of 1901, 49 P.S. 80, which authorized suspension of the work and completion of the contract on the death, bankruptcy or insolvency of the owner or contractor, has been omitted entirely. Such contingencies and the right to affirm or disaffirm a contract will now be governed by the agreements of the parties and by existing bankruptcy and decedents' estates law.

SECTION 306. Consolidation or Apportionment of Claims.—

(a) Consolidation of Claims. Where a debt is incurred for labor or materials furnished continuously by the same claimant for work upon a single improvement but under more than one contract, the claimant may elect to file a single claim for the entire debt. In such case, "completion of the work" shall not be deemed to occur with respect to any of the contracts until it has occurred with respect to all of them.

(b) Apportionment of Claims. Where a debt is incurred for labor or materials furnished by the same claimant for work upon several different improvements which do not form all or part of a single business or residential plant, the claimant shall file separate claims with respect to each such improvement, with the amount of each claim determined by apportionment of the total debt to the several improvements, and in such case, the amount of each separate claim may be less than five hundred dollars (\$500), provided that the total debt exceeds five hundred dollars (\$500). In no other case shall an apportioned claim be allowed.

Comment:

Adapted from Section 12, Act of 1901, 49 P.S. 54, 55. The section is clarified to apply to both business or residential plants. Previous decisions under Section 12, Act of 1901, which used only the word "plant," held that it was applicable only to structures used to carry on trade or business. The use of the words "residential plant" is not intended to change the previous law that a single claim cannot be filed against an entire row of separate residential dwellings. *Todd v. Gernert*, 223 Pa. 103 (1909), 72 A. 249.

SECTION 307. Removal or Detachment of Improvement Subject to Claim.—

(a) **Removal Prohibited: Effect.** No improvement subject to the lien of a claim filed in accordance with this act shall be removed or detached from the land except pursuant to title obtained at a judicial sale or by one owning the land and not named as a defendant. Any improvement otherwise removed shall remain liable to the claim filed, except in the hands of a purchaser for value.

(b) **Restraint of Removal by Court.** The court may on petition restrain the removal of the improvement in accordance with the Pennsylvania Rules of Civil Procedure governing actions to prevent waste.

Comment:

Adapted from Section 27, Act of 1901, 49 P.S. 57. Subsection (b) supplies substantially the same procedures and remedies as those authorized by Section 27, *supra*. No change in the law is intended.

ARTICLE IV.**WAIVER OF LIEN; EFFECT OF FILING.**

SECTION 401. Waiver of Lien by Claimant.—A contractor or subcontractor may waive his right to file a claim by a written instrument signed by him or by any conduct which operates equitably to estop such contractor or subcontractor from filing a claim.

Comment:

Adapted from Section 15, Act of 1901, as amended 1903, April 24, P. L. 297, 49 P.S. 71, and clarified to indicate that a waiver need not be signed by any person other than the person waiving his right to file a claim.

SECTION 402. Waiver by Contractor; Effect on Subcontractor.—A written contract between the owner and contractor, or a separate written instrument signed by the contractor, which provides that no claim shall be filed by anyone, shall be binding; but the only admissible evidence thereof, as against a subcontractor, shall be proof of actual notice thereof to him before any labor or materials were furnished by him; or proof that such contract or separate written instrument was filed in the office of the prothonotary prior to the commencement of the work upon the ground or within ten (10) days after the execution of the principal contract or not less than ten (10) days prior to the contract with the claimant subcontractor, indexed in the name of the contractor as defendant and the owner as plaintiff and also in the name of the contractor as plaintiff and the owner as defendant. The only admissible evidence that such a provision has, notwithstanding its filing, been waived in favor of any subcontractor, shall be a written agreement to that effect signed by all those who, under the contract, have an adverse interest to the subcontractor's allegation.

Comment:

Adapted from Section 15, Act of 1901, as amended 1903, April 24, P. L. 297, 49 P.S. 72.

SECTION 403. Release as Waiver.—A release signed by the claimant shall not operate as a waiver of the right to file a claim for labor or materials subsequently furnished, unless it shall appear thereby that such was the express intent of the party signing the same.

Comment:

Taken from Section 15, Act of 1901, as amended 1903, April 24, P. L. 297, 49 P.S. 74. Omitted as unnecessary is the phrase "but such release shall be so construed as to carry out that intent."

SECTION 404. Effect of Credit or Collateral.—The giving of credit or the receipt of evidence of indebtedness or collateral otherwise than as provided in section 303(e) shall not operate to waive the right to file a claim, but where credit is given, no voluntary proceedings shall be taken by the claimant to enforce the lien until the credit period has expired.

Comment:

Adapted from Section 15, Act of 1901, as amended 1903, April 24, P. L. 297, 49 P.S. 73. The addition of the words "receipt of evidence of indebtedness" declares existing decisional law.

SECTION 405. Right of Owner to Limit Claims to Unpaid Balance of Contract Price.—Where there has been no waiver of liens and the claims of subcontractors exceed in the aggregate the unpaid balance of the contract price specified in the contract between the owner and the contractor, then if the subcontractor has actual notice of the total amount of said contract price and of its provisions for the time or times for payment thereof before any labor or materials were furnished by him, or if such contract or the pertinent provisions thereof were filed in the office of the prothonotary in the time and manner provided in section 402, each claim shall, upon application of the owner, be limited to its pro-rata share of the contract price remaining unpaid, or which should have remained unpaid, whichever is greatest in amount at the time notice of intention to file a claim was first given to the owner, such notice inuring to the benefit of all claimants.

Comment:

Taken from Sections 17 and 18, Act of 1901, 49 P.S. 76, 77. Omitted as unnecessary procedural detail are the provisions authorizing stay of execution, payment into court, etc., all of which the court can control under general equitable principles by general rule or special order.

The provisions of Section 17, Act of 1901, for payment into court and discharge of lien are now found in Section 510 of this act.

SECTION 406. Right of Subcontractor to Rescind after Notice of Contract Provisions.—Any provisions of a contract between the owner and the contractor, which reduce or impair the rights and remedies of a subcontractor or which postpone the time for payment by the owner to the contractor for a period exceeding four (4) months after completion of the work, shall be grounds for rescission by the subcontractor of his contract with the contractor, unless such subcontractor was given actual notice thereof prior to the time of the making of his contract with the contractor, or the contract or the pertinent provisions thereof were filed in the office of the prothonotary in the time and manner provided by section 402. Such rescission shall not impair the right of the subcontractor to recover by lien or otherwise for work completed prior thereto.

Comment:

Adapted from Section 19, Act of 1901, 49 P.S. 78. The provisions of Section 16, Act of 1901, 49 P.S. 75, giving the subcontractor a right to rescind where the contract between the owner and contractor provide for payment in other than legal tender are omitted as unnecessary in view of the general language of this section. In the rare case where payment is to be made in other than legal tender and there has been no recision, the court will adjudicate the right of the parties upon equitable principles. It was deemed unnecessary to specifically declare this practice.

SECTION 407. Contracts Not Made in Good Faith; Effect.— A contract for the improvement made by the owner with one not intended in good faith to be a contractor shall have no legal effect except as between the parties thereto, even though written, signed and filed as provided herein, but such contractor, as to third parties shall be treated as the agent of the owner.

Comment:

Taken from Section 5, Act of 1901, 49 P.S. 29, with the exception that the word "improvement" is substituted for "structure or other improvement." No change in the law is intended since definition Section 201(1) defines "improvement" to include the structure.

ARTICLE V.**FILING AND PERFECTING CLAIM; DISCHARGE OF LIEN.**

SECTION 501. Notices by Subcontractor as Condition Precedent.—

(a) **Preliminary Notice in Case of Alteration and Repair.** No claim by a subcontractor for alterations or repairs shall be valid unless, in addition to the formal notice required by subsection (b) of this section, he shall have given to the owner, on or before the date of completion of his work, a written preliminary notice of his intention to file a claim if the amount due or to become due is not paid. The notice need set forth only the name of the subcontractor, the contractor, a general description of the property against which the claim is to be filed, the amount then due or to become due, and a statement of intention to file a claim therefor.

(b) **Formal Notice in All Cases by Subcontractor.** No claim by a subcontractor, whether for erection or construction or for alterations or repairs, shall be valid unless, at least thirty (30) days before the same is filed, he shall have given to the owner a

formal written notice of his intention to file a claim, except that such notice shall not be required where the claim is filed pursuant to a rule to do so as provided by section 506.

(c) Contents of Formal Notice. The formal notice shall state:

- (1) the name of the party claimant;
- (2) the name of the person with whom he contracted;
- (3) the amount claimed to be due;
- (4) the general nature and character of the labor or materials furnished;
- (5) the date of completion of the work for which his claim is made;
- (6) a brief description sufficient to identify the property claimed to be subject to the lien; and
- (7) the date on which preliminary notice of intention to file a claim was given where such notice is required by subsection (a) of this section, and a copy thereof.

The notice may consist of a copy of the claim intended to be filed, together with a statement that the claimant intends to file the original or a counterpart thereof.

(d) Service of Notice. The notices provided by this section may be served by first class, registered or certified mail on the owner or his agent or by an adult in the same manner as a writ of summons in assumpsit, or if service cannot be so made then by posting upon a conspicuous public part of the improvement.

Comment:

This section clarifies and continues the practice under Sections 2 and 8, Act of 1901 (Section 8 amended 1909, March 24, P. L. 65), 49 P.S. 23, 101, which required two separate notices by a subcontractor in claims for alterations and repairs and only one notice in claims for new construction. However, this section makes an important change by making the time for final notice uniform, abolishing the distinction between new construction and alterations and repairs in this respect.

Subsection (c) conforms the contents of the formal notice to the required contents of the claim itself and to avoid duplication of paper work it is expressly provided that the notice may consist of a copy of the claim intended to be filed.

The service provisions of Sections 2 and 8, Act of 1901, 49 P.S. 23, 101, are clarified and codified by providing for service in the same manner as a writ of summons in assumpsit.

SECTION 502. Filing and Notice of Filing of Claim.—

(a) Perfection of Lien. To perfect a lien, every claimant must:

(1) file a claim with the prothonotary as provided by this act within four (4) months after the completion of his work; and

(2) serve written notice of such filing upon the owner within one (1) month after filing, giving the court term and number and date of filing of the claim. An affidavit of service of notice, or the acceptance of service, shall be filed within twenty (20) days after service setting forth the date and manner of service. Failure to serve such notice or to file the affidavit or acceptance of service within the times specified shall be sufficient ground for striking off the claim.

Comment:

Subsection (a) (1) provides a uniform four-month filing limitation for both new construction and alterations and repairs. Section 10, Act of 1901, 49 P.S. 52, provided as to alterations and repairs that a claim must be filed within three months after completion and as to new construction within six months.

Subsection (a) (2) is taken from Section 21, Act of 1901, as amended 1917, April 5, P. L. 42, 49 P.S. 131. That section required the affidavit of service to be filed within the 30-day period allowed for service. Subsection (a) (2) provides that the affidavit of service can be filed within 20 days after service has been completed, thus allowing time for the preparation of the affidavit where it is filed in the last few days of the 30-day period.

The affidavit of service must be filed even though service is accepted. This follows prior decisional law. *Day and Zimmerman, Inc. v. Blocked Iron Corp.*, 15 D. & C. 2d 251, Aff. 394 Pa. 386 (1959), 147 A. 2d 332.

(b) Venue; Property in More Than One County. Where the improvement is located in more than one county, the claim may be filed in any one or more of said counties, but shall be effective only as to the part of the property in the county in which it has been filed.

Comment:

Subsection (b) is adapted from Section 11, Act of 1901, as amended 1905, April 17, P. L. 172, 49 P.S. 53. It clarifies the practice where an improvement is located in more than one county. Failure to file the lien in all counties will not invalidate the claim but will restrict it only to those counties where filed.

(c) Manner of Service. Service of the notice of filing of claim shall be made by an adult in the same manner as a writ of sum-

mons in assumpsit, or if service cannot be so made then by posting upon a conspicuous public part of the improvement.

Comment:

Subsection (c) conforms the manner of service to assumpsit. The provision for posting the premises is adapted from Section 21, Act of 1901, as amended 1917, April 5, P. L. 42, 49 P.S. 131.

SECTION 503. Contents of Claim.—The claim shall state:

(1) the name of the party claimant, and whether he files as contractor or subcontractor;

(2) the name and address of the owner or reputed owner;

(3) the date of completion of the claimant's work;

(4) if filed by a subcontractor, the name of the person with whom he contracted, and the dates on which preliminary notice, if required, and of formal notice of intention to file a claim was given;

(5) if filed by a contractor under a contract or contracts for an agreed sum, an identification of the contract and a general statement of the kind and character of the labor or materials furnished;

(6) in all other cases than that set forth in clause (5) of this section, a detailed statement of the kind and character of the labor or materials furnished, or both, and the prices charged for each thereof;

(7) the amount or sum claimed to be due; and

(8) such description of the improvement and of the property claimed to be subject to the lien as may be reasonably necessary to identify them.

Comment:

Adapted from Section 11, Act of 1901, as amended 1905, April 17, P. L. 172, 49 P.S. 53. The requisites of the contents of the claim have been enlarged and clarified. Clauses (4) and (5) of this section restore in part the averments required to be set forth by the Act of 1901 prior to its amendment by the Act of 1905, *supra*. The provision in clause (4) requiring the setting forth of the dates of the preliminary notice and of the formal notice of intention is new and was not required by the Act of 1901, as amended. See *Hamilton v. Means*, 155 Pa. Superior Ct. 245, 250 (1944), 38 A. 2d 528.

SECTION 504. Amendment of Claim. — A claim may be amended from time to time without prejudice to intervening rights by agreement of the parties or by leave of court, except that no amendment shall be permitted after the time for filing a claim has expired which undertakes to:

(1) substitute a different property than that described in the claim; or

(2) substitute a different party with whom the claimant contracted; or

(3) increase the aggregate amount of the claim.

Comment:

Adapted from Section 51, Act of 1901, 49 P.S. 243. Clause (3) is new and is added to make clear that so long as the total amount of the claim is not increased, amendments which change itemizations or break down lump sums are permissible. The decisional law was in conflict on this point.

The omission of the words "entirely" before "different property" and "wholly" before "different party" which appeared in the Act of 1901 are not intended to change prior decisional law. These words were considered unnecessary and the omissions are purely stylistic.

SECTION 505. Procedure for Contesting Claim; Preliminary Objections.—Any party may preliminarily object to a claim upon a showing of exemption or immunity of the property from lien, or for lack of conformity with this act. The court shall determine all preliminary objections. If an issue of fact is raised in such objections, the court may take evidence by deposition or otherwise. If the filing of an amended claim is allowed, the court shall fix the time within which it shall be filed. Failure to file an objection preliminarily shall not constitute a waiver of the right to raise the same as a defense in subsequent proceedings.

Comment:

This section modifies prior practice under Section 25, Act of 1901, 49 P.S. 135, by separating preliminary objections from trial on the merits, as in *assumpsit*. However, unlike *assumpsit*, failure to file preliminary objections is not a bar to raising them as a subsequent defense. Prior practice provided for a rule on claimant to discharge the claim and expressly provided that if "the material facts" are disputed, they shall be tried by jury without further pleadings, as if a *sci. fa.* to reduce the claim to judgment had been filed.

SECTION 506. Rule to File Claim.—

(a) Entry of Rule; Effect. At any time after the completion of the work by a subcontractor, any owner or contractor may file a rule or rules, as of course, in the court in which said claim may be filed requiring the party named therein to file his claim within thirty (30) days after notice of said rule or be forever barred from so doing. The rule shall be entered by the prothonotary upon the judgment index and in the mechanics' lien docket. Failure to file a claim within the time specified shall operate to wholly defeat the right to do so. If a claim be filed, it shall be entered as of the court, term and number of the rule to file the same.

(b) Effect of Claim Filed by Subcontractor. Where a claim is filed by a subcontractor in response to such rule, the owner may give written notice thereof to the contractor in the manner set forth by section 602 of this act, and upon the giving of such notice the owner may avail himself of the remedies provided by sections 601 and 604 of this act and the contractor shall be subject to the duties set forth by section 603 of this act.

Comment:

Adapted from Section 7, Act of 1901, 49 P.S. 51. The duties of the contractor and the remedies of the owner upon the filing of the claim are governed by Section 601, *et seq., infra*. The time for filing the claim in response to the rule has been extended from 15 to 30 days. Although the contractor is given the right to file a rule, neither the Act of 1901, *supra*, nor this act require the claimant to serve a copy of the claim on the contractor, but only on the owner who then gives notice to the contractor under Section 602 of this act.

SECTION 507. Indexing Claims, Et Cetera.—The prothonotary shall enter the claim, verdict and judgment upon the judgment index and mechanics' lien docket against the owner. When a claim, verdict or judgment is stricken, reversed or satisfied, or the name of a defendant is stricken, or an action upon the claim to reduce it to judgment is discontinued, or judgment is entered thereon in favor of the defendant, a note shall be made on the judgment index.

Comment:

Taken from Section 43, Act of 1901, 49 P.S. 241. Omitted, however, is the exception that there was to be no indexing of the judgment "in an appealable matter until after the expiration of the time for appeal." It is intended

that the index reflect the actual state of the record and interested parties be on notice that a judgment is appealable within the statutory time provided for appeal.

SECTION 508. Priority of Lien.—The lien of a claim filed under this act shall take effect and have priority:

(a) In the case of the erection or construction of an improvement, as of the date of the visible commencement upon the ground of the work of erecting or constructing the improvement; and

(b) In the case of the alteration or repair of an improvement, as of the date of the filing of the claim.

Comment:

Taken from Section 13, Act of 1901, 49 P.S. 203, Supp. The word "improvement" is substituted for "structure or improvement" since the definition of "improvement" in Section 201(1) includes structure.

Reference to the order of priority of tax and municipal claims contained in Section 13 is omitted as unnecessary since now governed by existing law.

The provision of Section 13 of the Act of 1901 giving mechanics' liens priority over advance money mortgages was declared unconstitutional in *Page v. Carr*, 232 Pa. 371 (1911), 81 A. 430 and is therefore omitted.

SECTION 509. Effect of Forfeiture of Leasehold.—The lien of every claim shall bind only the interest of the party named as owner of the property at the time of the contract or acquired subsequently by him, but no forfeiture or surrender of a leasehold or tenancy, whether before or after the filing of the claim, shall operate to prejudice its lien against the fixtures, machinery or other similar property.

Comment:

Taken from the last sentence of Section 13, Act of 1901, 49 P.S. 203, Supp.

SECTION 510. Discharge of Lien on Payment into Court or Entry of Security.—

(a) **Cash Deposit.** Any claim filed hereunder shall, upon petition of the owner or any party in interest, be discharged as a lien against the property whenever a sum equal to the amount of the claim shall have been deposited with the court in said proceedings for application to the payment of the amount finally determined to be due.

(b) Pro-rata Allocation. In any case where the claim or claims are limited in the manner and to the extent provided in section 405, the owner may deposit with the court in separate proceedings a sum equal to the total allowable amount of said claims determined in accordance with said section, whereupon the court, on petition of such owner, shall order all of said claims discharged as liens against the property, and the sum so deposited applied pro rata to the payment thereof in the amounts finally determined to be due.

(c) Refund of Excess. Any excess of funds paid into court as aforesaid, over the amount of the claim or claims determined and paid therefrom, shall be refunded to the owner or party depositing same upon application for the same.

(d) Security in Lieu of Cash. In lieu of the deposit of any such sum or sums, approved security may be entered in such proceedings in double the amount of the required deposit, or in such lesser amount as the court shall approve, which, however, shall in no event be less than the full amount of such required deposit; and the entry of such security shall entitle the owner to have such liens discharged to the same effect as though the required sums had been deposited in court as aforesaid.

(e) Authority of Court. The court, upon petition filed by any party, and after notice and hearing, may upon cause shown:

- (1) require the increase or decrease of any deposit or security;
- (2) strike off security improperly filed;
- (3) permit the substitution of security and enter an exoneration of security already given.

Comment:

Adapted from Sections 25 (dealing with proceedings to obtain discharge of lien) and 50 (dealing with approval of security), Act of 1901, 49 P.S. 135, 242.

Subsection (a) eliminates the previous requirement of pleading a defense to the claim as a prerequisite to the allowance of the petition to authorize payment into the court and to claimant's discharge.

Subsections (b) and (c) are new but carry out prior practice.

Subsection (d) authorizing deposit of cash is new.

Subsection (e), while following the substance of Section 50, Act of 1901, *supra*, is taken from the Rules of Civil Procedure.

ARTICLE VI.

DUTIES AND REMEDIES OF OWNER AND CONTRACTOR ON
NOTICE OF INTENTION TO FILE OR ON FILING OF
CLAIM BY SUBCONTRACTOR.

SECTION 601. Owner's Right to Retain Funds of Contractor.—An owner who has been served with a notice of intention to file or a notice of the filing of a claim by a subcontractor may retain out of any *moneys due or to become due to the contractor named therein, a sum sufficient to protect the owner from loss until such time as the claim is finally settled, released, defeated or discharged.

Comment:

Adapted from the last sentence of Section 8, Act of 1901, as amended 1909, March 24, P. L. 65, 49 P.S. 101.

SECTION 602. Notice to Contractor of Claim.—

(a) An owner served with a notice as provided by section 601 may, and if he has retained any funds due the contractor shall, give written notice thereof to the contractor named.

Comment:

Adapted from Section 9, Act of 1901, 49 P.S. 102.

(b) The notice shall state:

(1) the name of the subcontractor, the amount of the claim and the amount withheld, if any, by the owner;

(2) that unless the contractor within thirty (30) days from service of the notice settles, undertakes to defend, or secures against the claim as provided by section 603, the owner may avail himself of the remedies provided by section 604.

Comment:

Adapted from Section 9, Act of 1901, 49 P.S. 102. The time within which the contractor must act upon the notice is extended from 15 days, as provided by the Act of 1901, to 30 days.

(c) The notice may be given by the owner or his agent to the contractor personally, or to the contractor's manager, executive or

* "monies" in original.

principal officer or other agent, or if none of these persons can be found, by sending a copy of the notice by first class, registered or certified mail to the contractor at his last known office address.

Comment:

This subsection providing for the manner of service is new. Section 9, Act of 1901, *supra*, required the owner to serve the notice "upon the party personally liable for the debt" and did not prescribe the manner of service.

SECTION 603. Contractor's Duties on Receipt of Notice.—Upon service of the notice provided by section 602, the contractor shall within thirty (30) days from the contractor's receipt of notice:

(1) settle or discharge the claim of the subcontractor and furnish to the owner a written copy of a waiver, release or satisfaction thereof, signed by the claimant; or

(2) agree in writing to undertake to defend against said claim, and if the owner has not retained sufficient funds to protect him against loss, furnish the owner additional approved security to protect the owner from loss in the event the defense should be abandoned by the contractor or should not prevail; or

(3) furnish to the owner approved security in an amount sufficient to protect the owner from loss on account of said claim.

Comment:

This section is adapted from Section 9, Act of 1901, 49 P.S. 103, 105. The duties of the contractor are clarified and expanded to provide for the right of the owner to require additional security if the amount retained is not sufficient.

SECTION 604. Additional Remedies of Owner.—Should the contractor fail to settle, discharge or defend or secure against the claim, as provided by this act, the owner may:

(1) pay the claim of the subcontractor, upon which payment the owner shall be subrogated to the rights of the subcontractor against the contractor together with any instrument or other collateral security held by the subcontractor for the payment thereof; or

Comment:

Adapted from Sections 8 and 9, Act of 1901, Section 8 amended 1909, March 24, P. L. 65, 49 P.S. 101, 102, 104. Under Section 8, as amended, the only remedy of the owner, unless approved security was given to indemnify him from loss, was to retain a sum sufficient to protect him.

(2) undertake a defense against said claim in which case the contractor shall be liable to the owner for all costs, expenses and charges incurred in such defense, including reasonable attorneys' fees, whether said defense be successful or not, but the undertaking of such defense shall not affect the right of the owner to retain funds of the contractor under section 601 until the *sub-contractor's claim is finally defeated or discharged.

Comment:

This clause clarifies the right of the owner to defend.

ARTICLE VII.

JUDGMENT; EXECUTION; REVIVAL.

SECTION 701. Procedure to Obtain Judgment.—

(a) Practice and Procedure. The practice and procedure to obtain judgment upon a claim filed shall be governed by the Rules of Civil Procedure promulgated by the Supreme Court.

Comment:

This subsection abolishes the sci. fa. and lev. fa. and other procedural provisions of Sections 31 to 34 inclusive, 36, 37, and 51 to 53 inclusive, Act of 1901, as amended, 49 P.S. 136, 151 to 154 inclusive, 157, 158, 159, and 243 to 247 inclusive. These matters will now be governed by Rules of Civil Procedure to be promulgated by the Supreme Court which it is anticipated will conform as far as possible to the practice in assumpsit.

(b) Time for Commencing Action. An action to obtain judgment upon a claim filed shall be commenced within two (2) years from the date of filing unless the time be extended in writing by the owner.

Comment:

Adapted from Section 10, Act of 1901, 49 P.S. 52. The two-year period for commencing action to obtain judgment on the claim remains unchanged. The Act of 1901 permitted the waiver by the owner of the issuance of a writ

* "contractor's" in original.

of sci. fa. for an additional period of three years. The reference to the three-year period is omitted as unnecessary in view of Subsection (c) which provides that the judgment must be recovered within five years from the date of filing, totalling the two- and three-year period allowed by the Act of 1901.

(c) **Venue; Property in More Than One County.** Where a claim has been filed in more than one county as provided by section 502 (b), proceedings to obtain judgment upon all the claims may be commenced in any of the counties and the judgment shall be res adjudicata as to the merits of the claims properly filed in the other counties. The judgment may be transferred to such other county by filing of record a certified copy of the docket entries in the action and a certification of the judgment and amount, if any. The prothonotary of the court to which the judgment has been transferred shall forthwith index it upon the judgment index and enter it upon the mechanics' lien docket.

Comment:

This subsection is new. The Act of 1901 failed to provide for venue where the improvement is in more than one county. Section 45, Act of 1901, 49 P.S. 183, dealt only with the execution sale of a structure in more than one county and did not deal with the venue of filing of the lien. Subsection (c) is intended to clarify the procedure where claims have been filed in more than one county and to provide full faith and credit to judgments on the merits obtained in any of the counties in which a claim has been filed so as to obviate any necessity for an additional trial to obtain judgment in the other counties. However, a judgment on the merits in one county will not prevent an improper lien, one filed for example after the four-month period, from being stricken.

(d) **Limitation on Time of Obtaining Judgment.** A verdict must be recovered or judgment entered within five (5) years from the date of filing of the claim. Final judgment must be entered on a verdict within five (5) years. If a claim is not prosecuted to verdict or judgment, as provided above, the claim shall be wholly lost.

Comment:

Taken from Section 10, Act of 1901, 49 P.S. 52.

(e) **Defense to Action on Claim.** A setoff arising from the same transaction or occurrence from which the claim arose may be pleaded but may not be made the basis of a counterclaim.

Comment:

Taken from Section 36, Act of 1901, 49 P.S. 157. The provisions of that section providing that the filing of a claim for a grossly excessive amount could defeat the entire claim are omitted, thus changing prior practice.

The Act of 1901 is clarified to expressly provide that a set-off cannot be made the basis of a counterclaim resulting in a verdict in favor of the owner against the contractor or subcontractor. Also, the action is now treated as one in rem restricting set-offs to those arising from the same transaction or occurrence from which the claim arose. To the extent that prior decisions were not in accord, they are overruled.

SECTION 702. Effect of Judgment on Right to Personal Action.—Nothing in this act shall alter or affect the right of a claimant to proceed in any other manner for the collection of his debt.

Comment:

Taken from Section 58, Act of 1901, 49 P.S. 265. The last sentence of that section providing that a judgment on the merits in favor of or against a contractor shall have the effect of debarring any further proceedings against him personally is omitted for the reason that the contractor is not a party to the proceedings in the sense that a judgment can constitutionally be obtained against him in the mechanics' lien proceedings. See *Sterling Bronze Co. v. Syria Imp. Co.*, 226 Pa. 475 (1910), 75 A. 668; *Page v. Carr*, 232 Pa. 371, 376 (1911), 81 A. 430. However, the omission of this provision is not intended to interfere with the proper application of the principle of res adjudicata against the owner. See *Contractors Lumber & Supply Co. v. Quinette*, 185 Pa. Superior Ct. 66 (1958), 137 A. 2d 841, holding that a judgment for the owner in the mechanics' lien action on the ground he had not agreed to pay for the material is a defense to an assumpsit action on the same set of facts.

SECTION 703. Appeal from Judgment. — From any judgment, order or decree entered by the court of common pleas under the provisions of this act or from any refusal to open a judgment entered by default, an appeal may be taken to the Supreme Court or the Superior Court as in other cases.

SECTION 704. Satisfaction of Claims; Penalty for Failure to Satisfy.—It shall be the duty of a claimant upon payment, satisfaction or other discharge of the claim, verdict or judgment to enter satisfaction thereof upon the record upon payment of the costs of same. Upon failure to do so within thirty (30) days after a written request to satisfy, the court upon petition of any party in interest may order the claim, verdict or judgment satisfied and

the claimant shall be subject to a penalty in favor of the party aggrieved in such sum as the court in the petition proceedings shall determine to be just, but not exceeding the amount of claim.

Comment:

Adapted from Section 54, Act of 1901, 49 P.S. 262. The Act of 1901 required the commencement of a separate action for a penalty for failure to satisfy. This section now authorizes the imposition of penalties upon petition proceedings in the mechanics' lien action.

Section 705. Revival of Judgment.—Judgment upon a claim shall be revived within each recurring five-year period. The practice and procedure to revive judgment shall be governed by the Judgment Lien Law of 1947, as now in force or hereafter amended, and the Rules of Civil Procedure promulgated by the Supreme Court, but the lien of the revived judgment shall, as in the case of the original judgment, be limited to the lien property.

Comment:

The writ of sci. fa. procedure to revive judgments provided by Sections 40, 41 and 42, Act of 1901, 49 P.S. 221, 222, 223 and 224 is abolished. The practice will now be governed by the Judgment Lien Law of 1947 and Rules of Civil Procedure to be promulgated by the Supreme Court.

SECTION 706. Execution upon Judgment.—

(a) Judgment Essential to Execution. No execution shall issue against the property subject to a claim except after judgment shall have been obtained upon the claim, and within five (5) years from the date of such judgment or a revival thereof.

Comment:

Taken from Section 10, Act of 1901, 49 P.S. 52.

(b) Conformity to Rules of Civil Procedure. The practice and procedure relating to execution shall be governed by the Pennsylvania Rules of Civil Procedure relating to execution.

Comment:

The special provisions of Section 39, Act of 1901, 49 P.S. 201, relating to sequestration and the provisions providing a three-month stay where the lien property is occupied as a home are deleted. Likewise, the provisions of Section 47, Act of 1901, 49 P.S. 184, relating to leasehold estates, execution sales, and giving the purchaser the option of affirming the lease unless it

otherwise provides, are not included. The general Execution Rules of the Supreme Court will govern. Similarly, the provisions of Section 48, Act of 1901, 49 P.S. 160, insofar as they relate to stay of execution proceedings, will also be governed by the Execution Rules of the Supreme Court.

(c) Division of Tract. Where only a part of a single tract is subject to the lien of a mechanic's claim, and such part cannot be sold without prejudice or injury to the whole, the court on petition of the owner, claimant or any person in interest may order the entire tract sold and shall equitably distribute the proceeds of sale according to the relative value of the part bound by and that free of the claim. The court may determine the matter itself and for that purpose may receive evidence by deposition or otherwise, or may appoint an auditor to hear the evidence and report to the court.

Comment:

Taken from Section 14, Act of 1901, 49 P.S. 31. The present Supreme Court Execution Rules do not precisely cover this situation and to prevent any possible question the provisions of former Section 14 have been included.

ARTICLE VIII.

SEVERABILITY AND EFFECTIVE DATE.

SECTION 801. Severability.—If any provision of this act, or the application thereof to any person or circumstance is held invalid, the remainder of this act, and the application of such provision to other persons or circumstances, shall not be affected thereby and to this end the provisions of this act are declared to be severable.

SECTION 802. Effective Date.—This act shall take effect on the first day of January, 1964, but shall not apply to liens filed prior to said date except with respect to the practice and procedure prescribed by Article VII of this act.

Comment:

This section makes clear that as to liens filed prior to the effective date, the procedural provisions of Article VII shall nevertheless apply. As to claims which have arisen prior to the effective date but are filed after the effective date, the substantive provisions of the Act of 1901 as to the time for filing will apply but the procedural provisions of this act will govern.

ARTICLE IX.

REPEALER.

SECTION 901. Specific Repeal.—The following act is repealed absolutely.

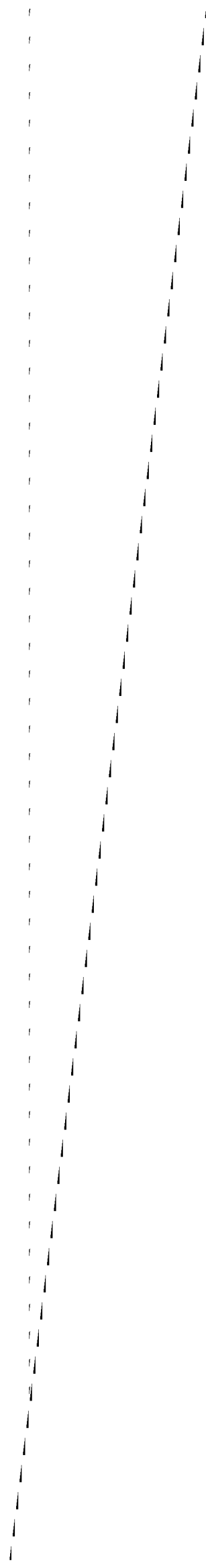
The act of June 4, 1901 (P. L. 431), entitled “An act defining the rights and liabilities of parties to, and regulating the effect of, contracts for work and labor to be done, and labor or materials to be furnished, to any building, bridge, wharf, dock, pier, bulkhead, vault, subway, tramway, toll-road, conduit, tunnel, mine, coal-breaker, flume, pump, screen, tank, derrick, pipe-line, aqueduct, reservoir, viaduct, telegraph, telephone, railway or railroad line; canal, millrace; works for supplying water, heat, light, power, cold air, or any other substance furnished to the public; well for the production of gas, oil or other volatile or mineral substance; or other structure or improvement, of whatsoever kind or character the same may be; providing remedies for the recovery *of debts due by reason of such contracts, and repealing, consolidating and extending existing laws in relation thereto.”

SECTION 902. General Repeal.—All other acts and parts of acts are repealed in so far as they are inconsistent herewith.

APPROVED—The 24th day of August, A. D. 1963.

WILLIAM W. SCRANTON

* “or” in original.



APPENDIX A

Act of 1901, June 4, P.L. 431, As Amended

Act of 1901, June 4, P. L. 431, As Amended

Section 1.

(49 PS §1)—The words “structure or other improvements,” as used in this act, mean any building, bridge, wharf, dock, pier, bulk-head, vault, subway, tramway, toll-road, conduit, tunnel, mine, coal-breaker, flume, pump, screen, tank, derrick, pipe-line, aqueduct, reservoir, viaduct, telegraph, telephone, railway, or railroad line, canal, mill-race, works for supplying water, heat, light, power, cold air or any other substance furnished to the public, well for the production of water, gas, oil, or other volatile liquid or mineral substance, or other structure or improvement of whatsoever kind or character the same may be.

(49 PS §2)—The word “owner” means an owner in fee, a tenant for life or years; or one having any estate or interest in the property described in the claim, who by contract or agreement, express or implied, in person or by another, contracts for the erection, construction or removal of the structure or other improvement, or any part thereof; for the addition thereto, for the alteration or repair thereof, or for the fitting up or equipping the same, from time to time, for the purpose for which it is intended.

(49 PS §3)—The word “contractor” means one who, by contract or agreement, express or implied, with the owner or the one who acts for the owner, plans or superintends the structure or other improvement, or any part thereof; or furnishes labor, skill or superintendence thereto; or supplies or hauls materials, reasonably necessary for and actually used therein; or any or all of them, whether as an architect, superintendent, builder or material man.

(49 PS §4)—The word “sub-contractor” means one who, by contract or agreement, express or implied, with the contractor or with one who acts for him, superintends the structure or other improvement, or any part thereof; or furnishes labor, skill or superintendence thereto; or supplies or hauls material, reasonably necessary for and actually used therein; or any or all of

them, whether as superintendent, builder or material man; excluding however architects and those contracting with material men.

(49 PS §5)—The word “claimant” means the person who has filed or may file the claim, as a lien against the property.

(49 PS §6)—The word “property” means the estate in fee; the freehold, leasehold or other estate or interest therein, with the structure or other improvement thereon, and the fixtures and other personal property used in fitting up and equipping the same for the purpose for which it is intended; all of which belong to the owner, and against which the claim is filed as a lien.

Section 2.

(49 PS §21)—Every structure or other improvement, and the curtilage appurtenant thereto, shall be subject to a lien for the payment of all debts due to the contractor or sub-contractor in the erection and construction or removal thereof, in the addition thereto, and in the alteration and repair thereof, and of the out-houses, sidewalks, yards, fences, walls or other enclosure belonging to said structure or other improvement; and in the fitting up or equipment of the same for the purpose for which the improvement is made, including paper-hanging, grates, furnaces, heaters, boilers, engines, chandeliers, brackets, gas and electric pipes, wires and fixtures; and for like debts, contracted by such owner in the fitting up or equipment with machinery, gearing, boilers, engines, cars, or other useful appliances, of new or old structures or other improvements, for business purposes; and for like debts, contracted by such owner for rails, ties, pipes, poles and wires, and the excavation for and laying and relaying, or stringing and restringing, said rails, ties, pipes or wires, or erecting said poles, whether on the property described in the claim or upon other private property or public highways.

(49 PS §22)—But no lien shall be allowed for labor or materials furnished for purely public purposes; nor against any property held by the committee of a lunatic, the guardian of a minor, or a trustee under deed, will or appointment by the court, unless by virtue of a contract made under authority of the court, or of the power contained in the deed or will.

(49 PS §23)—Nor shall any claim for alterations or repairs, or for fitting up or equipping old structures with machinery, gearing, boilers, engines, cars, or other useful appliances, be valid, unless it be for a sum exceeding one hundred dollars; and, in the case of a sub-contractor, unless, also, written notice of an intention to file a claim therefor, if the amount due be not paid, shall have been given to the owners or some one of them, or for him to an adult member of his family or the family with which he resides, or to his architect, agent, manager, or executive or principal officer, on or before the day the claimant completed his work or furnished the last of his materials.

(49 PS §24)—Nor shall any claim be valid against the estate of an owner, by reason of any consent given by him to his tenant to improve the leased property, unless it shall appear in writing, signed by such owner, that said improvement was in fact made for his immediate use and benefit.

Section 3.

(49 PS §25)—The curtilage appurtenant to the structure or other improvement shall be such as is reasonably needed for the general purpose for which such structure or other improvement was made, and belonging to the same owner, including other structures, whether newly erected, or altered, or changed for such purpose and forming part of a single business or residential plant.

(49 PS §26)—A substantial addition to a structure or other improvement shall be treated as a new erection or construction thereof; and the addition and the structure or other improvement of which it becomes a part, and the curtilage appurtenant to both, shall be subject to the lien. Every adaptation of an old structure or other improvement to a new or distinct use, which affects a material change in the interior or exterior thereof, shall also be deemed an erection or construction thereof. Any labor or materials furnished in completely fitting up or equipping the structure or other improvement for the purpose for which it was intended, whether on the property subject to the lien or elsewhere, if actually done, or used for the purpose, shall be treated as part of the erection, or construction thereof.

(49 PS §27)—Materials placed on or near the curtilage appurtenant to the structure or other improvement, or delivered to the owner or contractor for use therein, shall be presumed to have been used therein.

Section 4.

(49 PS §28)—Any owner, not being a committee, guardian or trustee, as aforesaid, who shall knowingly suffer or permit any person, acting as if he were the owner, to make a contract for which a claim could be filed, without objecting thereto at the time, shall be treated as ratifying the act of such person acting as if he were the owner, and the claim may be filed against the real owner, with the same effect as if he himself had made the contract. Ratification shall also be presumed, and like subjection to lien shall follow, if the owner, not being a committee, guardian or trustee, as aforesaid, subsequently learning of such contract or of work being done upon his property, shall not within ten days thereafter, repudiate the same, either by notice to the contractor and sub-contractors or by posting such repudiation on the most public part of the structure or other improvement.

Section 5.

(49 PS §29)—A contract made by the owner with one not intended in good faith to be the contractor for the structure or other improvement, shall have no legal effect, except as between the parties thereto, even though written, signed and filed, as hereinafter provided; but such contractor, as to third parties, shall be treated as the agent of the owner.

Section 6.

(See Appendix C, page 94.)

Section 7.

(49 PS §51)—After the right to file a claim is complete, any owner or contractor may enter a rule, as of course, in the office of the prothonotary of the court of common pleas of the proper county, requiring any party named to file his claim within fifteen days after notice of such rule, or be forever thereafter debarred

from so doing. Such rule shall be entered and indexed in a docket to be known as the mechanics' lien docket. A failure to file a claim within the time specified shall operate to wholly defeat the right so to do. If a claim be filed, it shall be entered as of the court, term and number of the rule. Pending such rule, and until the claim is finally defeated, the owner may, unless approved security be given to indemnify him from loss, retain out of any payments due or to become due to the contractor, a sum sufficient to protect him from loss.

Section 8.

(49 PS §101)—Any sub-contractor, intending to file a claim, must give to the owner written notice to that effect, verified by affidavit, setting forth the name of the party with whom he contracted, the amount alleged to be still due, the nature of the labor or materials furnished, and the date when the last work was done or last materials furnished. Such notice must be served at least one month before the claim is filed, and within three months after the last of his work was done or materials furnished, if he has six months within which to file his claim, and within forty-five days thereafter, if he has but three months within which to file it; but no such notice need be served if the sub-contractor be ruled to file his claim before the expiration of said periods. Service may be made personally on the owner anywhere; or such notice may be served on an adult member of his family, or of the family with which he resides, if such owner resides within the county where the structure or other improvement is situate. If he resides without the county where such structure or improvement is situate, then such notice may either be served on his architect or on the party in possession of the structure or improvement, or it may be posted on some public part of the structure or other improvement. After such notice, and until the claim is finally defeated, the owner may, unless approved security be given to indemnify him from loss, retain out of any payment due or to become due the contractor, a sum sufficient to protect him from loss.

Section 9.

(49 PS §102)—An owner served with the notice and sworn statement, aforesaid, may serve a copy thereof upon the party personally liable for the debt therein referred to, with notice that

unless such claim is settled within fifteen days thereafter or he is furnished with a sworn statement setting forth wherein it is intended to be disputed, he may pay the same, and deduct the amount thereof from the contract price or hold the contractor personally liable for any loss.

(49 PS §103)—If the contractor approve the claim or fail to serve a sworn statement of defense thereto, the owner may, before the filing of the claim or at any stage of the proceedings thereon, pay the same and deduct the amount thus paid from the contract price, or hold the contractor liable for any loss.

(49 PS §104)—Upon payment of his claim the sub-contractor shall assign or transfer to the owner his claim against the contractor and any note or other collateral security he may have received for its payment.

(49 PS §105)—If the contractor give notice of a defense thereto, it shall be his duty to defend any claim filed, at his own expense, and if he fails or refuses so to defend or continue defending it, he shall be liable to the owner for all costs, expenses, charges, and the reasonable counsel fees necessary for making such defense, whether successful or not.

Section 10.

(49 PS §52)—In the case of tenancies or leasehold estates, of alterations and repairs, and of fitting up or equipping old structures with machinery, gearing, boilers, engines, cars or other useful appliances, the claim must be filed in the court of common pleas of the county or counties in which the structure or other improvement is situate, within three months after the claimant's contract or agreement is completed; and in all other cases, within six months thereafter; and when filed, it shall be entered and indexed in the mechanics' lien docket. Upon it a writ of scire facias must issue within two years, unless the owner, by writing filed before the expiration of that time, waive the necessity for so doing for a further period, not exceeding three years; and a verdict must be recovered or judgment entered on the scire facias within five years after it is issued. Final judgment must be entered on the verdict within five years after its recovery. After judgment is entered, it must be revived, by writ of scire facias

to revise the judgment or by judgment thereon, within each recurring period of five years. If a claim be not filed within the time aforesaid, or if it be not prosecuted in the manner and at the time aforesaid, it shall be wholly lost.

Section 11.

(49 PS §53)—Every person entitled to such lien shall file a claim, or statement of his demand, in the office of the prothonotary of the court of common pleas of the county in which the building may be situate, which claim shall set forth:

1. The names of the party claimant and of the owner, or reputed owner, of the building, and also of the contractor, architect or builder.

2. The amount or sum claimed to be due, and the nature or kind of the work done, or the kind and amount of materials furnished, or both; and the time when the materials were furnished, or the work done, or both, as the case may be.

3. The locality of the structure or other improvement, with such description thereof as may be necessary for the purpose of identification, and a description of the real estate upon which the same is situate.

Section 12.

(49 PS §54)—If the labor or materials be furnished continuously in the erection and construction of, addition to, or removal of a structure or other improvement, the claimant may file a single claim, though furnished under more than one contract, with the same effect as if furnished continuously under a single contract. A single claim may be filed against more than one structure or other improvement, if they are all intended to form part of one plant.

(49 PS §55)—No apportioned claim shall hereafter be allowed, but separate claims, with the amount due determined by apportionment, may be filed as herein set forth.

Section 13.

(49 PS §203 Note)—The lien of every claim for the alteration of or repair to a structure or other improvement, or for fitting up old structures with machinery, gearing, boilers, engines, cars, or other useful appliances, shall take effect as of the date of its filing, and shall be paid out of the proceeds of a judicial sale of the property described therein, in preference to any estate, charge or lien of which the claimant had not actual or constructive notice at that time, except municipal or tax claims and the exemption allowed by law; but such lien shall be wholly lost if the property be conveyed, in good faith and for a valuable consideration, prior to the filing of the claim. In all other cases, the lien of the claim shall take effect as of the date of the visible commencement, upon the ground, of the work of building the structure or other improvement, and shall be paid out of the proceeds of a judicial sale of the property described therein, in preference to any estate, charge or lien of which the claimant had not actual or constructive notice at that time, except municipal and tax claims and the exemption allowed by law. An estate, charge or lien, of which the claimant had actual or constructive notice before the date of such visible commencement, upon ground, if given to secure advances of money, knowingly to be furnished for the purpose of making the improvement in whole or in part, shall have, with prior liens and encumbrances, a preferential claim upon the funds raised by a judicial sale of said property, to the extent only of the actual value of the property immediately prior to such visible commencement of the work; but the proceeds of such sale, above such value, shall be applied to the payment of the mechanics' claim in preference to such estate, charge or lien. The lien of every such claim shall bind only the interest of the party named as owner of the property at the time of the contract, or subsequently acquired by him; but no forfeiture or surrender of a leasehold or tenancy, whether before or after filing the claim, shall operate to prejudice its lien against the fixtures, machinery, or other similar property described therein.

Section 14.

(49 PS §30)—Upon petition of any claimant having or being entitled to a lien, the actual value of the property bound by such advance money, estate, charge, or lien, and the amount of the

advances actually made, shall be determined prior to a judicial sale of the property,—a stay being granted for that purpose should justice so require; but if application be not made prior to the sale, the same shall be determined upon the distribution of the fund realized thereby.

(49 PS §31)—And the court, upon petition of any such claimant, may also require that a tract of land about to be sold at judicial sale, part of which is bound by or liable for such claim, shall be so divided that the part which is so bound or liable shall be sold separately from the rest of the tract, if it can equitably be done; and, if not, then it, or an auditor appointed after the sale, shall determine the relative value of the part bound by and that free of the claim, and the fund realized shall be distributed accordingly.

(49 PS §32, Act of 1935, July 12, P. L. 667)—From and after the passage of this act, no person, partnership or corporation furnishing material, supplies, fixtures or equipment for the erection, alteration, repair or remodeling of any building or structure, where such person, partnership or corporation furnished such material, supplies, fixtures or equipment under bailment lease, or conditional sales contract, or any other instrument or contract by which the person, partnership or corporation so furnishing such material, supplies, fixtures or equipment reserves the title to such material, supplies, fixtures or equipment or the right to reacquire the title to same, shall have any right to file any mechanic's lien claim to secure payment for such material, supplies, fixtures or equipment.

Section 15.

(49 PS §71)—The right to file a claim may be waived by agreement between the claimant and the party with whom he contracts, or by any conduct which operates to equitably estop the claimant.

(49 PS §72)—If the legal effect of the contract between the owner and the contractor is, that no claims shall be filed by anyone, such provision shall be binding; but the only admissible evidence thereof, as against a sub-contractor, shall be proof of actual notice thereof to him, before any labor or materials furnished by

him; or proof that a duly written and signed contract to that effect has been filed in the office of the prothonotary of the court of common pleas of the county or counties where the structure or other improvement is situate, prior to the commencement of the work upon the ground, or within ten days after the execution of the principal contract, or not less than ten days prior to the contract with the claimant; and the prothonotary shall index the same, making the contractor the defendant and the owner the plaintiff. The only admissible evidence that such a provision has, notwithstanding its filing, been waived in favor of the claimant, shall be a written agreement to that effect, signed by all those who, under the contract, are interested antagonistically to the claimant's allegation.

(49 PS §73)—The giving of credit or the receiving of collateral security shall not operate to waive the right to file a claim, but shall delay voluntary proceedings thereon by the claimant until the time of credit shall have expired.

(49 PS §74)—A release signed by the claimant shall not operate as a waiver of the right to file a claim for labor or materials subsequently furnished, unless it shall appear thereby that such was the express intent of the party signing the same, but such release shall be so construed as to fully carry out that intent.

Section 16.

(49 PS §75)—Where a contract, between the owner and contractor, provides that payment shall be made in other than legal tenders, such contract shall have no legal effect as against the sub-contractor or those claiming under him, unless actual notice thereof shall have been given the claimant or use-claimant before any labor or materials furnished by him; or, a duly written and signed contract to that effect shall have been filed in the office of the prothonotary of the court of common pleas of the county or counties where the structure or other improvement is situate, prior to the commencement of the work upon the ground, or within ten days after the execution of the principal contract or not less than ten days prior to the contract with the claimant. Such provision of the contract shall not bar the right to file a

claim to recover the amount due in legal tenders; but the owner may file a petition, under oath or affirmation, setting forth the facts, under the term and number of the claim first filed, and making all the parties who have filed or are entitled to file claims parties respondent, and praying appropriate relief; whereupon the court shall grant a rule to show cause why the relief prayed for should not be allowed. The court shall from the pleadings, aided as to the material disputed facts, if any, by depositions or by a hearing at bar, make such order or decree as the facts shall warrant. If the court shall find that payment was agreed to be made in other than legal tenders, it shall decree that upon the owner complying with his part of the agreement, within such time as the court shall designate, all the claims filed or which shall thereafter be filed by the parties respondent, as to whom the owner has not waived his right, shall be stricken from the record; and the payments to be made by the owner in other than legal tenders shall be made liable by the decree of the court to the parties interested, in the same manner and to the same extent as the structure or other improvement itself would have been if no such provisions had appeared in the contract, and distribution shall be made as herein set forth and upon equitable principles. Other parties interested may intervene at any time before actual distribution. Should other parties than the respondents subsequently file claims, such claims shall be stricken off, upon motion of the owner, unless it be proved that the claimant did not know of the pendency of said proceedings, did not participate in the proceeds of the payments actually made, through ignorance thereof; or, that the owner knew of the rights of the claimant in time for him to intervene, and yet gave him no notice of the proceedings, in which event the claim shall be proceeded on as if no such provision appeared in the contract.

Section 17.

(49 PS §76)—When the contract between the owner and the contractor provides that payments shall only be made at given times, such contract shall be efficacious as against the sub-contractor or those claiming under him, if actual notice thereof shall have been given to the claimant or use-claimant, before any labor done or labor or materials furnished by him; or a duly written

and signed contract to that effect shall have been filed in the office of the prothonotary of the court of common pleas of the county or counties where the structure or other improvement is situate, prior to the commencement of the work upon the ground, or within ten days after the execution of the principal contract, or not less than ten days prior to the contract with the claimant. If the contract be written, signed and filed within the times above set forth, and the owner complies with his part thereof, the structure or other improvement shall not be liable to claims in the aggregate in excess of the balance of the contract price remaining unpaid, or which should have remained unpaid, whichever is greatest in amount at the time notice was first given the owner of an intention to claim a lien upon such property; such notice, if given in good faith, inuring to the benefit of all claimants. The court shall stay all executions upon judgments recovered upon such claims if payments are not due, and the owner may pay into court the whole balance found due under said contract, in accordance with the provisions of this section; whereupon the court shall order the claims to be stricken off, upon petition, answer and replication, in the manner and with the effect provided herein in cases where payment is to be made in other than legal tenders.

Section 18.

(49 PS §77)—The sub-contractors shall be bound, to the extent of the notice given, by the contract as signed and filed, though it be but part of the entire contract or contracts between the owner and contractor. When filed, the prothonotary shall enter it in the judgment index in the name of the contractor, and shall be responsible for any neglect of duty in that regard as in other cases.

Section 19.

(49 PS §78)—When any contract for labor or materials to be furnished to a structure or other improvements shall be so drawn as to affect or in any manner impair the rights and remedies given to a claimant or use-claimant, or to postpone the time of payment for a period exceeding six months after the last of the labor or materials are furnished, it shall be the duty of the party making such contract, whether duly written, signed and

filed or not, to give actual notice thereof to those contracting with him, prior to the time of the making of the contract with or the employment of such party. A failure so to do shall be sufficient ground for a rescission of the contract by the party theretofore ignorant of the fact, and the recovery by him pro rata, by lien or otherwise, for the labor or materials furnished to the time of rescission.

(49 PS §79)—And the same right of recovery, by lien or otherwise, shall exist where the structure or other improvement is never completed, but through no fault of the claimant, unless it be destroyed by fire or other casualty.

Section 20.

(49 PS §80)—Where proceedings in bankruptcy or insolvency are instituted by or against any contractor owner, they shall operate to suspend all proceedings upon any contract or sub-contract with him for labor to be done or labor or materials to be furnished to the structure or other improvement, and if he be adjudicated a bankrupt or insolvent, or if he should die, then such contractor or sub-contractor may, at his option, refuse to proceed further under his contract; and such contractor or sub-contractor may upon the happening of any such contingency, by notice to those contracting with him, suspend and end his contracts with such third parties, who shall have a like right, and so on down to the last party connected with the structure or other improvement. When any such contract has been suspended or ended, the right to file a claim or to sue under the contract shall remain; and may be exercised with the same effect as if further proceedings, under such contract, had been determined by consent of all parties.

Section 21.

(49 PS §131)—Within one month after the filing of the claim, the claimant shall serve a notice upon the owner of the fact of the filing of the claim, giving the court, term and number, and the date of filing thereof; and shall file of record in said proceedings an affidavit setting forth the fact and manner of such service. Service of the notice may be accepted by the owner's attorney; or the claimant, his agent or attorney, may serve the

notice upon the owner in any of the methods now provided for by law in the case of a summons; or, if for any cause service by any of the aforesaid methods cannot be had, then by posting the notice upon the property described in the claim and by mailing a copy thereof to the owner at his last known residence. A failure to serve such notice or post it, or have service accepted as herein provided, and to file an affidavit thereof within the time specified, shall be sufficient ground for striking off the claim.

Section 22.

(49 PS §132)—Where a claim has been filed which includes unpaid items of labor or materials, furnished by one who contracts with the claimant, whether or not such party is himself entitled to file a claim against the property, such party may, at any time before actual payment or satisfaction of the claim, file of record in said proceeding a petition, under oath or affirmation, setting forth how his interest arises and the extent thereof, and praying that he be substituted as a use-claimant to the extent of said interest, but not exceeding the balance due to the claimant; whereupon the court shall grant a rule upon the claimant, the owner and the contractor to show cause why the relief prayed for should not be allowed. The court shall from the pleadings, aided as to the material disputed facts, if any, by depositions or by a hearing at bar, make such order or decree as the facts shall warrant. If there be a dispute as to the amount to which the petitioner is entitled as against the claimant, that dispute shall be settled upon the distribution of the fund paid on account of said claim, or by a suit at common law, if such suit shall have been brought, or by an issue in said proceedings, and the court may make such orders in relation to the matter as upon equitable principles should be made. After a copy of said petition and rule shall have been served upon the owner or contractor, payments made by him, or a release or discharge given by the claimant, shall not defeat or in any manner affect the rights of the use-claimant; but in other respects, the trial of any issue upon the claim shall be as if between the claimant and defendants only.

Note: By lower court decision, this section was declared unconstitutional as special legislation: *Lisowski v. Ryan*, 21 Dist. 174 (1911).

Section 23.

(49 PS §133)—Any party having a lien against, estate in or charge upon the property included in such claim, may file his petition, under oath or affirmation, averring that the date mentioned in the claim as the time when the structure or other improvement was commenced is incorrect, or that the claim is filed against more land than should be justly included therein, or that for any reason the claim is postponed to the rights of the petitioner, and praying an appropriate decree; whereupon the court shall grant a rule upon such claimant to show cause why the relief prayed for should not be allowed, and shall stay proceedings on the claim pending the hearing of the rule, should justice so require. At the instance of others than those personally served with the scire facias, such rule shall be allowed, though judgment be recovered on the claim. The court shall from the pleadings, aided as to the material disputed facts, if any, by depositions or by a hearing at bar, make such order or decree as the facts shall warrant. Like proceedings shall be had if the petition shall aver that the claim is for any reason invalid, has been paid, waived or released, or should not legally or equitably be allowed as a claim against the property; but the material disputed facts in such cases, if any, shall at the request of either party, be tried by a jury without further pleadings. When such request is granted by the court, the fact thereof shall be entered on the judgment index as a *lis pendens*, with the same effect as if a writ of *scire facias* had duly issued upon said claim.

Section 24.

(49 PS §134)—Any person having an interest in the property described in the claim, whether existing at the time of the claimant's contract or acquired subsequently thereto, may, by agreement of the parties or by leave of court, intervene as a party defendant and make defense thereto, with the same effect as if he had been originally named as a defendant in the claim filed. And the claimant may, by writing filed at his costs, strike off the name of any defendant therein, and may substitute as a defendant, and issue a *scire facias* against, any person who may have acquired an interest as owner after the time of said contract, or who is the personal representative of an owner or contractor who

has died, either before or after filing the claim, but such substitution shall always be without prejudice to any intervening rights.

Section 25.

(49 PS §135)—Any defendant named in the claim, or any person allowed to intervene and defend thereagainst, may present his petition, under oath or affirmation, setting forth that he has a defense in whole or in part thereto, and of what it consists; and praying that a rule be granted upon the claimant to file an affidavit of the amount claimed by him, and to show cause why the petitioner should not have leave to enter security, or pay money into court in lieu of the claim; whereupon a rule shall be granted as prayed for. Upon the pleadings filed, or from the claim and the affidavit of defense, and without a petition where an affidavit of defense has been filed, the court shall determine how much of the claim is admitted or not sufficiently denied; and shall enter a decree that, upon the payment by such petitioner to the claimant of the amount thus found to be due, with interest and costs if anything be found to be due, or upon payment into court, if the claimant refuses to accept the same, and upon entering approved security in at least double the balance claimed and probable costs, or, upon payment into court of a sum sufficient to cover the balance claimed, with interest and costs, that such claim shall be wholly discharged as a lien against the property described therein, and shall be stricken from the judgment index. Thereafter the material disputed facts, if any, shall be tried by a jury, without further pleadings, with the same effect as if a writ of scire facias has duly issued upon said claim to recover the balance thereof; but the jury shall be sworn to try the issues between the claimant and the parties signing the bond, or between the claimant and the party who paid the fund into court, as the case may be; and verdict, judgment and execution shall follow as in an action commenced at common law.

Section 26.

(49 PS §56)—Any claim filed or to be filed under the provisions of this act may be assigned or transferred to a third party, either absolutely or as collateral security; but no such

assignment or transfer shall impair or in any manner affect the rights of use-claimants, or give the assignee any other rights than his assignor had. Payment to the claimant of the amount of his claim, or the finishing of the contract by one who is a guarantor or surety of or for the claimant, unless such guaranty or suretyship inures to the benefit of the owner, shall operate as an equitable assignment of the claim, with a paramount equity in his favor as against any other assignee, but a secondary right as against any defendant or use-claimant. In either case, if the claim be not already filed, the assignee may file it in the name of the assignor to his use. If it be already filed, it shall be marked to the use of the assignee.

Section 27.

(49 PS §57) —No structure or other improvement bound by or liable for any such claim shall be removed or detached from the premises on which it is bound, pending the determination of the validity of such claim and its payment if adjudged to be valid, unless by virtue of a title obtained by judicial sale, or by one owning the land and not named as a defendant, or acquiring title through a defendant; and the court, upon proof of an attempt or intention to remove or detach the same by or for a party defendant, or by one succeeding to the title of such defendant, shall upon entering approved security enjoin such removal or detaching, until and unless approved security be first entered to protect the claimant in the amount of his recovery. If the structure or other improvement be in fact removed, it shall still be liable for the claims filed, except in the hands of a purchaser for value, after removal and without notice; as shall the land also, if it was bound while the structure or other improvement was on it.

Section 28.

(See Appendix C, page 90.)

Section 29.

(See Appendix C, page 91.)

Section 30.

(See Appendix C, page 92.)

Section 31.

(49 PS §136)—Any party named as a defendant in the claim filed, or admitted to defend thereagainst, may file as of course and serve a notice upon the claimant, and the use-claimant if any, to issue a scire facias thereon within fifteen days after notice so to do. If no scire facias be issued within fifteen days after the affidavit of service of notice is filed of record, the claim shall be stricken off by the court, upon motion. If a scire facias be issued in accordance with such notice, the claimant shall not be permitted to discontinue the same, or suffer a nonsuit upon the trial thereof; but a compulsory nonsuit shall be entered by the court if the plaintiff does not appear, or withdraws, or for any reason fails to maintain his claim.

Section 32.

(49 PS §151)—The proceedings to recover the amount of any claim, as aforesaid, shall be by writ of scire facias in the following form, namely:—

.....County, ss:

The Commonwealth of Pennsylvania,

To the Sheriff of said county, Greeting:

Whereas,.....hath filed a claim in our court of common pleas.....for the county of....., against.....for the sum of.....for (work done or materials furnished, or both, as the case may be), to (or on) a certain structure or other improvement, to wit: (describing the property as in the claim):

And Whereas, It is alleged that said sum still remains due and unpaid to the said....., now we command you that you make known to the said..... that.....be and appear before the judges of our said court, at a court of common pleas to be held at.....on the first Monday of.....next, to show if anything.....know or have to say why the said sum of.....should not be levied of the said property, to the use of the said....., according to the form,

decree, and effect of the act of Assembly in such case made and provided, if to them it shall seem expedient; also make known to said....., if any defense.....have thereto, to file.....affidavit or affidavits of defense thereto, in the office of the prothonotary of the said court, within fifteen days after the return day of this writ, and that otherwise judgment may be entered against.....for the whole amount of the said claim, and the said property sold to recover the amount thereof; and have you then and there this writ.

Witness the Honorable.....President Judge of our said court.....under date of.....day of Anno Domini one thousand nine hundred and

(Seal.)Prothonotary.

But the parties to the claim may agree upon an amicable scire facias, upon such terms as may be agreed upon, with the same effect as if a scire facias in the form aforesaid had been duly issued, served, and returned.

The said court shall have full power and ample authority, and is hereby authorized and directed, to enter judgment against such of the said defendants as shall have been duly served according to law, or have appeared, for want of an affidavit of defense or sufficient affidavit of defense, as the case may be, if the parties so served or appearing, or any of them, shall neglect or fail to file an affidavit of defense within the time mentioned in the said writ.

Section 33.

(49 PS §152)—The defendants or their counsel may accept service of said writ of scire facias, but if service be not accepted the writ shall be served by the sheriff as in the case of a summons. If the service has not been or cannot be fully made in the county in which the writ is issued, then alias or pluries writs may issue in like form, or the sheriff may depute the sheriff of any other county in the Commonwealth to make such service, should the defendants or any of them be found therein. If service cannot be made upon the defendants or any of them, in any

of the ways above set forth, then service may be had by serving the person or persons in possession of the property described in the claim, if any, with a like copy thereof, or by posting a brief notice of the contents of said writ upon the most public part of said property, if no one be found in possession thereof, and by advertising a like brief notice, once a week for four successive weeks, in one newspaper of general circulation in the county, and in the legal periodical, if any, designated by the court for that purpose. Said notice shall always state that judgment may be entered and the property sold, if an affidavit of defense be not filed within fifteen days after a date named, which shall be the date fixed for the last advertisement. Service of any such writ may be made at any time within three months from the date on which it was issued, but it shall be served and returned at the earliest time possible, and the plaintiff may require its return at any time, whether or not it be actually served.

Section 34.

(49 PS §153)—If no affidavit of defense be filed within the time designated, judgment may be entered and damages assessed by the prothonotary by default, for want thereof. If no affidavit of defense be filed by the contractor, judgment may be entered against him for want thereof, and the damages assessed though an affidavit of defense be filed by the owner; but no judgment for want thereof shall be entered against the owner, if an affidavit of defense be filed by the contractor.

(49 PS §154)—If an affidavit of defense be filed, a rule may be taken for judgment for want of a sufficient affidavit of defense, or for so much of the claim as is insufficiently denied, with leave to proceed for the residue. The defendant may, by rule, require the plaintiff to reply, under oath, or affirmation, to the statements set forth in the affidavit of defense, and after the replication has been filed may move for judgment on the whole record.

Section 35.

(49 PS §155)—If service be accepted for the contractor, or if he shall have been personally served with the original scire facias or any scire facias to revive, or if it be left for him with

an adult member of his family or the family with whom he resides, or if he appears to or takes any action in the case, and judgment be entered against him, it shall have all the effect of a personal judgment in a suit at common law; and executions may, from time to time, be issued against him thereupon, or the same may be revived, transferred to other counties, or suits brought thereupon in other jurisdiction, with like effect, though the owner successfully defends against the claim, or proceedings be still pending thereon.

(49 PS §156)—If the owner pays any judgment finally recovered on the claim, the claimant shall, upon payment of costs, mark the personal judgment or judgments against the contractor to the use of the owner, and shall transfer to the latter any note or other collateral security he may have for his claim; but the court may, upon petition of the contractor, open the judgment or cause the return of the securities if there are any equities as between such owner and contractor which shall require such action, and thereafter try the issues raised in such proceeding as in other cases.

Section 36.

(49 PS §157)—In addition to the defenses growing out of the insufficiency of the claim itself, or of the proof of the facts necessary to sustain it as a claim against the structure or other improvement, any defense which would defeat the action were it a personal one against the contractor to recover for the particular work or materials required to be done or furnished under the contract of the owner, or which shows that the claim was intentionally filed for a grossly excessive amount, shall wholly defeat the claim; and proof that the work in certain particulars was not in accordance with that contract shall defeat it pro tanto. Minor defects, or a failure to complete in minor particulars, shall operate as a defense only to the extent necessary to repair or complete the work.

(49 PS §158)—For the purpose of enabling a proper defense to be made, the court may order a more specific statement of the claim, or an examination of the books and papers referred to therein, and may strike off the claim for a failure to comply with the order, as in other cases.

Section 37.

(49 PS §159)—A compulsory nonsuit, unless reversed or set aside, shall operate to bar all further proceedings on the claim. If judgment be finally recovered in favor of the claimant, it shall not have the effect of a personal judgment against the owner if he be not also the contractor, except for the costs of the proceeding. To recover the costs adjudged to the successful party, he may issue execution, as in personal actions.

Section 38.

(See Appendix C, page 92.)

Section 39.

(49 PS §201)—After the expiration of twenty days from the recovery of judgment upon any claim, except in cases where the property named is essential to the business of a quasi-public corporation, the court shall, upon the petition of such judgment creditor, appoint a sequestrator of the rents, issues and profits of the property bound by the judgment, unless in the meantime an appeal be taken and approved security given to operate as a supersedeas. If the owner against whom the judgment is entered be in possession of the property sequestered, the court shall, upon petition filed and served, grant a rule, and, if it be made absolute, award a writ in the nature of a writ of a habere facias possessionem, directed to the owner commanding him to deliver such possession to the sequestrator within fifteen days thereafter, unless such property be occupied by the owner and his family for a home, in which case he shall be entitled to retain possession for a period of three months from the time the petition was served upon him.

Note: This section would appear to fall with Section 28, which was declared unconstitutional as a new method for collection of debt or for enforcement of judgment.

Section 40.

(49 PS §221)—The judgment upon said claim may be revived by a writ of scire facias in the following form:

The Commonwealth of Pennsylvania, to C. D. and E. F.,
Greeting:

Whereas, A. B., claimant, on the.....day of.....,
A. D. 1....., recovered judgment in the sum of.....
dollars against you that the following described property be
sold to satisfy the same:

(Here describe property in full.)

And whereas, We have been given to understand that though
judgment as aforesaid was rendered, yet the amount thereof is
still due and unpaid, and remains as a lien against said prop-
erty: Now, you are hereby notified to file your affidavit of de-
fense to A. B.'s claim upon said judgment, if any defense you
have, in the office of the prothonotary of our said court, within
fifteen days after the service of this writ upon you. If no affi-
davit of defense be filed within that time, said judgment may be
revived against you for the amount set forth, with interest from
the time of its recovery, and said property be sold to recover
the whole thereof.

Witness the Honorable....., President Judge
of our said court, this.....day of....., Anno Domini,
1.....

(Seal)Prothonotary.

(49 PS §222)—But the parties to the judgment may agree
upon an amicable scire facias to revive, or to an amicable judg-
ment of revival, upon such terms as may be agreed upon, with
the same effect as if a scire facias in the form aforesaid had
been duly issued, served and returned. If a terre-tenant, whose
deed has been duly recorded, is not suggested as a defendant and
made a party to the scire facias to revive, the amicable scire
facias to revive, or the amicable judgment of revival, or shall
not be made a party and served within the period prescribed for
reviving the lien of ordinary judgments, the lien of the claim
shall be lost so far as his interest in the property is concerned.

Section 41.

(49 PS §223)—The defendants or their counsel may accept service of said writ of scire facias to revive, but if service be not accepted the writ shall be served by the sheriff as in the case of a summons. If the defendants or either of them cannot be served in the county, then alias or pluries writs may issue in like form, or the sheriff may depute the sheriff of any other county in the Commonwealth to make such service, should the defendants or any of them be found therein. If service cannot be made upon the defendants or any of them, in any of the ways above set forth, then service may be had by serving the person or persons in possession of the property described in the claim, if any, with a like copy thereof, and, if no one be found in possession thereof, then by posting a brief notice of the contents of said writ on the most public part of said property. Said notice shall state that judgment may be entered and the property sold, if an affidavit of defense be not filed within fifteen days after a date named, which shall be the date of such posting. Service of any such writ may be made at any time within three months from the date on which it was issued, but it shall be served and returned at the earliest time possible, and the plaintiff may at any time require its return, whether or not it be actually served.

Section 42.

(49 PS §224)—The practice and procedure following said scire facias to revive, so far as applicable, shall be the same as in the case of the original scire facias to collect the claim.

Section 43.

(49 PS §241)—Every claim filed, scire facias issued, verdict recovered, and judgment entered, in accordance with the provisions of this act, shall be entered on the judgment index of the court. When a claim is stricken off or satisfied, the name of a defendant stricken out, a scire facias discontinued or quashed, or a verdict or judgment stricken off, set aside by granting a new trial, or otherwise reversed or satisfied, a note thereof shall be made on said judgment index, but not in an appealable matter until the expiration of the time for such appeal.

Section 44.

(49 PS §181)—Execution upon any judgment recovered upon any such claim, except where the property named is essential to the business of a quasi-public corporation, shall be by writ of levavi facias in the following form:

The Commonwealth of Pennsylvania, to the Sheriff of.....County, Greeting:

Whereas, A. B., claimant, on the.....day of....., Anno Domini 1....., recovered judgment in the sum of.....dollars, with interest from the.....day of....., Anno Domini 1.....and costs amounting to.....dollars, in our court of common pleas of said county, of.....Term, 1....., Number....., M. L. D., against C. D. and E. F., that the following described property in your bailiwick be sold to satisfy the same, viz:

(Here describe property in full.)

Now this is to command you that you expose the said property to sale by public vendue and outcry, after due advertisement according to law, and that return of said sale, with the moneys realized thereby and this writ, you make to our said court on the.....day of....., Anno Domini 1.....

Witness the Honorable....., President Judge of our said court, this.....day of....., Anno Domini 1.....

(Seal)Prothonotary.

Section 45.

(49 PS §182)—The title acquired at the sheriff's sale under such writ shall be the title which was bound by the lien, as hereinbefore set forth; but no mortgage, ground-rent, or other charge upon or estate in the land, shall be affected by such sale, unless upon the record existing at the time of sale some lien upon the property, prior in date, is also discharged thereby.

(49 PS §183)—Where the structure or other improvement, the subject of the lien, shall be situate in more than one county, the whole thereof shall be sold under a writ of levamur facias in the county where the principal part thereof shall be; but notice of such sale shall be given in every county, where any part thereof is situate, to the same extent as if the whole thereof were in that county, and the sheriff's deed shall be acknowledged and recorded in every such county.

Section 46.

(See Appendix C, page 94.)

Section 47.

(49 PS §184)—If a leasehold estate or other tenancy, bound by or liable for any such claim, be sold at judicial sale, whether under proceedings on the claim or otherwise, the purchaser shall, unless the lease provides otherwise, have the option of affirming the lease or tenancy and continuing as a tenant under all the terms and conditions of such letting, or of removing the property subject to such claim, unless the owner, upon notice so to do, shall elect to purchase the estate and property so bought, at a value to be determined by the majority of three appraisers, selected by the parties or appointed by the court.

Section 48.

(49 PS §160)—At any time before the property is sold, approved security may be entered for a stay of proceedings until the expiration of one year after the date of filing the claim. The entry of such security by the owner, before the entry of judgment on the claim, shall be equivalent to an admission by him that the property is liable for the claim. The entry of such security by the contractor, before the entry of judgment on the claim, shall be equivalent to an admission by him that he has no defense to the recovery of judgment against himself, but shall not debar the owner from defending the claim. After the stay has expired, the claimant may proceed upon the claim and the bond given, separately or simultaneously. If payment is made by the owner, the bond given by the contractor shall be assigned to the use of

the owner, and he may recover thereupon the amount paid, or any part thereof, if the accounts as between himself and the contractor shall justify such recovery.

(49 PS §162, Act of 1933, May 22, P. L. 845, §1)—From and after the passage of this act, in all actions of scire facias sur mechanics liens, there shall be filed by plaintiff, with the praecipe for such writ, an affidavit, which affidavit shall set forth only (a) the name of the parties plaintiff and defendant, (b) the amount claimed to be due, (c) the name or names of the real owners of the property against which such mechanics lien is filed, (d) a specific reference to the mechanics lien upon which such writ of scire facias is based, which mechanics lien shall, by such reference, be deemed to be a part of such affidavit. The affidavit of service of notice of having filed such mechanics lien shall be deemed to be a part of the record of such mechanics lien.

(49 PS §163, Act of 1933, May 22, P. L. 845, §2)—There shall be served upon each defendant named in such writ, with the writ, a copy of such affidavit.

(49 PS §164, Act of 1933, May 22, P. L. 845, §3)—Every allegation of fact in such affidavit and in the mechanics lien, if not specifically or by necessary implication denied in the affidavit of defense, shall be taken to be admitted, and such allegation in such affidavit and mechanics lien so not denied may be offered in evidence.

(49 PS §165, Act of 1933, May 22, P. L. 845, §4)—The affidavit of defense shall answer specifically each allegation of fact in the affidavit filed with such praecipe and in the mechanics lien; and the defendant may, by notice to plaintiff, require plaintiff to file a replication to such affidavit of defense within fifteen days from service of such notice.

(49 PS §166, Act of 1933, May 22, P. L. 845, §5)—Failure upon the part of plaintiff to file with the praecipe for writ of scire facias affidavit provided for in section one hereof shall be ground for quashing such writ, upon notice.

(49 PS §167, Act of 1933, May 22, P. L. 845, §6)—The affidavit provided for in section one hereof if embracing allegations other than as provided for in said section shall, upon motion, be stricken from the record.

(49 PS §168, Act of 1933, May 22, P. L. 845, §7)—After service of such writ and copy of affidavit, plaintiff may, after fifteen days after return day, take judgment in default of affidavit of defense against such defendants as have been served; provided that, if the contractor defendant has filed an affidavit of defense, plaintiff shall not be entitled to take judgment in default of affidavit of defense as against the owner defendant until the affidavit of defense filed by the contractor has been disposed of. Plaintiff shall not be entitled to enter judgment in default of appearance.

(49 PS §169, Act of 1933, May 22, P. L. 845, §8)—Plaintiff may, after filing of affidavit of defense, move for judgment for want of sufficient affidavit of defense.

(49 PS §170, Act of 1933, May 22, P. L. 845, §9)—Defendant may, after ruling plaintiff to file replication, whether replication is filed or not, move for judgment on the whole record.

Section 49.

(49 PS §261)—In case the structure or other improvement bound by or liable for any such claims, or which would be so liable but for a waiver thereof, shall be destroyed or removed by fire or other casualty prior to the payment of the claims, any insurance placed upon the property by the owner, contractor or sub-contractor because of such improvement, and actually received or to be received by him because of its destruction or removal, shall, after the insured has received all premiums paid and any money actually expended by him on account of such improvement, inure to the benefit of claimants and use-claimants under him, with the same effect as if they were parties to the contract of insurance; and any party in interest may by petition filed in his case, or by bill in equity if no claim be actually filed, compel the application of such surplus of insurance money, in the same way and manner, to the same parties and in the same proportions, as if the fund were realized by a judicial sale of

the property and there was no waiver of liens. If an insurance placed upon the property because of such improvement shall inure also to the benefit of a mortgagee, ground-rent owner, or other person having an estate in, charge upon or encumbrance against such land and improvement, the said claimants or use-claimants, after such person shall have been paid in full, shall be subrogated to his rights against the owner and property, to the extent of the difference between the money recovered by and that paid out by such owner, but not exceeding the amount of insurance actually paid.

Section 50.

(49 PS §242)—Wherever security is required to be given in accordance with the provisions of this act, it may be approved by the prothonotary, subject to an appeal to the court as in other cases. If thereafter the security be found to be insufficient, new security may be required within a given time; in default of the entry of which the cause may proceed with the same effect as if none had been given, the sureties however remaining liable. By agreement of the parties, or upon approval by the court after notice, new security may be entered in lieu of that originally taken and an exoneratur entered on the first bond, or the security given may be limited to a particular property, if clear of encumbrance, and if the security be entered as a lien upon said property.

Section 51.

(49 PS §243) — Any claim, petition, answer, replication, scire facias, affidavit of defense, or other paper filed of record, may be amended from time to time by agreement of the parties, or by leave of the court, upon petition for that purpose, under oath or affirmation, setting forth the amendment desired, that the averments therein contained are true in fact, and that by mistake they were omitted from or wrongfully stated in the particulars as to which the amendment is desired. Such amendment shall be of right, saving intervening rights; except that no amendment of the claim shall be allowed, after the time for its filing has expired, which undertakes to substitute an entirely different property from that originally described in the claim,

or a wholly different party as the defendant with whom the claimant contracted; but the description of the property or the name of such defendant may be amended so as to be made more accurate, as in other cases of amendment. If the names of the owner and contractor be correctly stated and the description of the property be reasonably accurate, the claim shall be sufficient notice to the owner, purchasers and lien creditors, though it may have to be amended in other particulars.

(49 PS §244)—The court may, for cause shown and filed of record, enlarge the time for requiring the filing of the claim, affidavit of defense, answer or replication, for issuing a scire facias, or for entering security, by rule or special or standing order; and any judgment by default may be opened by the court, upon cause shown; but no enlargement of the time for requiring the filing the claim or for issuing a scire facias shall extend the same beyond the time herein provided for preserving or retaining the lien thereof.

Section 52.

(49 PS §245)—Any rule granted under the provisions of this act may be made returnable at such time as the court may direct, either therein or by rule of court, or by special or standing order. All petitions, answers and replication shall be under oath or affirmation. Answers must be filed and served within fifteen days after service of the petition, and rules and replications must be filed within fifteen days after service of the last of the answers. Replications must be confined to a reply to new matter set forth in the answers.

(49 PS §246)—The facts averred by either party and not denied in the answer or replication of the other, shall be taken as true in all subsequent proceedings in the cause, without the necessity for proof thereof, unless amended as herein set forth. Any fact necessarily found by the court in finally determining a rule, shall also be taken as true in all subsequent proceedings in the cause, without the necessity for proof thereof, unless either party, by writing filed and served at least ten days prior to the time fixed for trial, requires that it be submitted to the jury.

Section 53.

(49 PS §247) — All notices, petitions and rules shall be served upon counsel for the parties interested, or upon the parties themselves, in the manner bills in equity are served, or upon the owner by leaving a copy with the party in possession of the structure or other improvement; or in default of service, then in such manner as the court shall direct.

Section 54.

(49 PS §262)—If the claim shall be paid or otherwise satisfied or discharged at any time after filing, or if a wilfully false claim shall be filed, it shall be the duty of the claimant or his legal representatives, at the request of the owner or of any other person interested, and on the payment of costs if any be due, to enter satisfaction on the record of such claim, which satisfaction shall forever discharge the lien. In such cases, a refusal to satisfy the claim for a period of sixty days after notice so to do, served upon the claimant or his agent or attorney, shall subject such claimant to a suit as for a penalty at the hands of the party aggrieved, in such sum as the jury shall determine to be just, but not exceeding the amount of the claim.

Section 55.

(49 PS §202)—Every distribution under the provisions of this act shall be made as follows:

(1) To use-claimants the amounts due to them, but not exceeding in the aggregate the sum distributable to the lien of the sub-contractor through whom they claim.

(2) To sub-contractors the amounts due to them, after deducting any sum awarded to use-claimants under them.

(3) To contractors the amounts due to them, after deducting any sums awarded to sub-contractors and use-claimants under them.

(4) To the owner any balance remaining.

If the amount distributable to any of said classes shall be insufficient to pay in full, the claims in that class shall abate proportionately.

Section 56.

(49 PS §263) — In every distribution hereafter made under legal proceedings in any court, if any portion of the funds for distribution shall have been realized because of labor or materials furnished to any structure or other improvement by the party whose estate is to be distributed, any distributee claiming for labor done or labor or materials furnished to such structure or other improvement shall be entitled to priority against the portion of the fund thus realized.

Section 57.

(49 PS §264) — As a condition precedent to payment for labor done or labor or materials furnished to a structure or other improvement, the party making the same shall be entitled to demand from the person entitled thereto, a receipt stating the amount thereof and for what it is given.

Section 58.

(49 PS §265) — Nothing herein contained shall alter or in any manner affect the other rights and liabilities of those entitled to file claims under the provisions of this act; it being intended hereby only to furnish and regulate the remedies herein set forth, and to provide means for the enforcement of such remedies; but a judgment on the merits, in favor of or against the contractor, shall have the effect of debarring any further proceedings against him personally.

Section 59.

(49 PS §266) — From any definite judgment, order or decree, entered by the court of common pleas under any of the provisions of this act, or from the refusal to open a judgment entered by default, an appeal may be taken by the party aggrieved to the Supreme Court or Superior Court, as in other cases.

Section 60.

(49 PS §267) — This act shall apply only to claims wherein the work was commenced to be performed or materials were

commenced to be furnished after the date of its approval, but the rights of claimants under existing laws shall remain unaffected by its passage.

Section 61.

(49 PS §268)—(Repealer) . . . it being intended that this act shall furnish a complete and exclusive system in itself, so far as relates to liens for labor or materials commenced to be furnished after its approval.



APPENDIX B

Rules of Civil Procedure Governing Actions Upon Mechanics' Liens

and Explanatory Comments prepared by
Philip W. Amram, Chairman, and Sidney Schulman, Secretary,
Pennsylvania Civil Procedural Rules Committee

IN THE
Supreme Court of Pennsylvania

Procedural Rules Committee

ORDER ADOPTING
RULES OF CIVIL PROCEDURE GOVERNING
ACTIONS UPON MECHANICS' LIENS

And now, November 29, 1963, the following Rules of Civil Procedure Governing Actions upon Mechanics' Liens having been recommended by the Civil Procedural Rules Committee appointed by this court, under section 3 of the Act of June 21, 1937, P. L. 1982, are hereby adopted and promulgated by the Supreme Court of Pennsylvania, as authorized by the aforesaid Act of Assembly.

The Prothonotary of the Supreme Court is ordered to make publication of these procedural rules and they, together with a copy of this order, shall be printed by the State Reporter in the first available volume of the State Reports as provided by the order of this court filed September 19, 1938.

January 1, 1964, is hereby fixed as the effective date of said rules and they shall apply to actions pending at that time.

As directed by section 1 of the aforesaid Act of 1937, copies of the rules hereby promulgated shall be sent by the aforesaid Prothonotary of this court to "the Prothonotaries or Clerks of all courts which may be affected thereby" and thereupon said rules "shall be published by such Prothonotaries or Clerks in the same manner as local Rules adopted by such courts."

By the court,
JOHN C. BELL, JR.,
Chief Justice.

**Rules of Civil Procedure Governing Actions Upon Mechanics'
Liens**

Rule 1651. Definitions. Conformity to Assumpsit.

(a) As used in this chapter

“claim” means a mechanics’ lien claim which has been filed;

“action” means an action to obtain judgment upon a claim.

(b) Except as otherwise provided in this chapter, the procedure to obtain judgment upon a claim shall be in accordance with the rules relating to the action of assumpsit.

Note: The procedure governing the filing of a claim is provided by the Mechanics’ Lien Law of 1963, 49 P.S. 1101, *et seq.* These rules relate to the procedure between the filing of the lien and reduction of the claim to judgment.

Rule 1652. Venue.

(a) The action shall be commenced in and only in the county in which the claim has been filed.

(b) Where the property liened is located in more than one county and claims have been filed in more than one county, the action may be brought in any such county.

Note: Subdivision (b) parallels Section 701(c) of the Mechanics’ Lien Law of 1963, 49 P.S. 1701(c).

Rule 1653. Commencement of Action.

An action shall be commenced by filing with the prothonotary

(a) a complaint, or

(b) an agreement for an amicable action.

Rule 1654. Defendant.

(a) The plaintiff shall name as defendant the owner, named in the claim and the owner, if known, at the time the action is commenced.

(b) If the last owner of record prior to the commencement of the action has died, the plaintiff shall name as a defendant his personal representative, heir or devisee, if known.

As amended May 27, 1964, effective June 30, 1964.

Note: For definition of owner see Section 201(3) of Mechanics' Lien Law of 1963, 49 P.S. 1201(3).

Rule 1655. Service.

(a) Service of the complaint may be made within the time and in the manner provided for the service of a writ of summons in an action of assumpsit.

(b) The plaintiff shall also have the right of service upon a defendant in any other county by having the sheriff of the county in which the action was commenced deputize the sheriff of the county where service may be had.

(c) If service cannot be made under Subdivisions (a) and (b) of this rule, and the plaintiff sets forth in his complaint or files an affidavit that a defendant is deceased or his whereabouts are unknown, or that he resides outside the State, or that the owner at the time the action is commenced is unknown, the sheriff shall (1) make service on that defendant by posting a copy of the complaint on a public part of the property and (2) send him, if his identity is unknown and he is not known to be deceased, a copy of the complaint by registered mail to his last known address.

As amended May 27, 1964, effective June 30, 1964.

Note: By Definition Rule 76, registered mail includes certified mail.

Rule 1656. The Complaint.

The plaintiff shall set forth in the complaint

- (1) the name and address of each party to the action and if the action is commenced by a sub-contractor, the name and address of the contractor;
- (2) the court, term, number and the date of the filing of the claim and a copy thereof as an exhibit;
- (3) a demand for judgment.

Rule 1657. Joinder of Causes of Action Prohibited.

No other cause of action may be joined with an action to obtain judgment on a claim except that where the improvement is located in more than one county and claims have been filed in more than one of said counties the plaintiff may join the claims in a single action.

Note: Under Section 306(a) of the Mechanics' Lien Law of 1963, 49 P.S. 1306(a), the claimant may join in one mechanics' lien claims against the same property arising from work done under separate contracts or against more than one structure if intended to form part of the same plant.

Rule 1658. Set-Off. Counterclaim.

A set-off arising from the same transaction or occurrence upon which the claim is based may be pleaded as new matter. No counterclaim may be asserted.

As amended May 27, 1964, effective June 30, 1964.

Rule 1659. Compelling Commencement of Action. Judgment Upon Default.

If a claimant has filed a claim and does not file a complaint, the prothonotary, upon praecipe of an owner, shall enter a rule as of course upon the claimant to file a complaint within twenty (20) days after service of the rule, or be forever barred from so doing. If the claimant fails to do so, the prothonotary, upon praecipe of the owner and proof of service, shall enter judgment for the defendant.

Note: See Rule 233 as to method of service of rule and form of affidavit.

Rule 1660. Judgment. Execution.

Judgment in the action shall be enforced as provided by Rule 3190.

Note: See Section 706(c) of the Mechanics' Lien Law of 1963, 49 P.S. 1706(c) for special execution provisions where only part of a single tract is subject to the lien.

Explanatory Comments on The Mechanics' Lien Rules

By

PHILIP W. AMRAM, *Chairman*

and

SIDNEY SCHULMAN, *Secretary*

SUPREME COURT COMMITTEE ON RULES OF CIVIL PROCEDURE

The new Mechanics' Lien Rules, effective January 1, 1964, regulate only the procedure for reducing to judgment mechanics' lien claims already filed. The procedure governing the filing of the claim, the substantive law in regard thereto and the statute of limitations for reducing the claim to judgment are all governed by the Mechanics' Lien Law of 1963.

Following the general policy of the rules, the procedure for reducing the claim to judgment follows the assumpsit practice. Exceptions are made only as to venue, use of the writ of summons to commence the action, service, joinder of causes of action and counterclaim. The exceptions are as follows:

(a) Venue

Since the action is in rem rather than transitory, venue is confined to the county where the claim has been filed (Rule 1652(a)). Where the property subject to the claim is located in two or more counties and claims have been filed as provided by the Mechanics' Lien Act in more than one county, venue lies in any county in which a claim has been filed. Under section 701(c) of the act, it will not be necessary to commence actions in *all* of the counties in which claims have been filed but judgment in one county will be considered an adjudication as to the merits of claims properly filed in the other counties. Section 701(c) makes provision for recording the judgment in the other counties by the filing of a certified copy of the docket entry and judgment.

(b) Commencement of Action

The writ of sci. fa. and accompanying affidavit procedure provided by the prior Mechanics' Lien Act of 1901 and the Act of 1933 are abolished. The action to reduce the claim to judgment will now be commenced by either a complaint or an amicable agreement. The use of a writ of summons is not permitted. At this stage of the proceeding something more should be required, since proceedings have in fact already been commenced by the filing of the claim. The complaint, however, has been simplified and only the names and addresses of the parties, the court, term, number, date of filing, a copy of the claim and a demand for judgment need be set forth.

(c) Pleadings

Since the action is in rem, joinder of other causes of action is expressly prohibited by Rule 1657; nor may counterclaims be pleaded or considered by the court under Rule 1658 which incorporates the express prohibition of section 701(e) of the Mechanics' Lien Law of 1963. However, setoffs arising from the same transaction or occurrence from which the claim arose may be pleaded to reduce or defeat the claim.

(d) Service

Since the action is in rem, special provision is made by Rule 1655(b) and (c) for service by deputation or by registered mail and posting when defendant resides outside the Commonwealth or his whereabouts are unknown or he is deceased.

(e) Parties

The prior practice under the Mechanics' Lien Law of 1901 as to parties remains undisturbed. The defendant is required to name in the complaint the "owner" named in the claim and the owner at the time the action is commenced. In most cases, the owner at such time will be the owner at the time the claim was filed. However, if there has been a transfer between the time the claim is filed and an action to reduce the claim to judgment is commenced, the complaint, by incorporating as an exhibit a copy of the claim, will give notice of the parties with whom the claimant contracted and the owner at that time.

If the owner dies after the claim has been filed but before the action to reduce to judgment has been commenced, the procedure analogous to mortgage foreclosure will apply. If the estate is in the process of administration, the personal representative will be joined as a party. If the estate has been fully administered and the property has passed by operation of law or by will to heirs or devisees, they will be the owners named in the complaint. In counties having registry bureaus, there should be little difficulty in ascertaining the new owners. In the rare situation where there has been no administration, no will filed or deed of transfer recorded, the plaintiff will, as in other cases, such as mortgage foreclosure and other in rem actions, name the person last known to him from the recorded deed or other information to be the owner and make service under Rule 1655. This provides that if plaintiff sets forth in his complaint or by separate affidavit filed that a defendant's whereabouts is unknown or that he is dead or that he resides outside the Commonwealth, service may be made by posting and registered or certified mail to the last known address. Where, however, the last owner is known to be deceased and there are no personal representatives, heirs or devisees known to plaintiff, then registered or certified mail notice to the decedent is specifically excused by Rule 1655(c) (2) as in mortgage foreclosure and posting of the premises alone is sufficient. However, a registered or certified letter might be sent to a known decedent in order that it might be returned by the postal authorities as undeliverable because the addressee is "deceased," in the rare situation where conventional evidence is not easily available to the plaintiff.

(f) *Execution and Revival*

After judgment has been obtained, execution will be enforced under the Execution Rules (3190 *et seq.*). In view of the repeal of the Mechanics' Liens Law of 1901, the references to that act in the execution rules are now obsolete. Revival of judgment will be governed by the Judgment Lien Law of 1947 as now in force or hereafter amended. Rules of Civil Procedure modifying the procedure under the Act of 1947 have been distributed in tentative draft form for consideration by the bench and bar and will be presented to the Supreme Court for promulgation in the near future.

Additional Pennsylvania Rules
of Civil Procedure
Applicable to Mechanics' Liens Actions

Rule 3190. Judgment. Execution.

A judgment in rem in an action or proceeding upon a mechanics lien, . . . shall be enforced against the real property subject to the lien, claim or charge in accordance with Rules 3180 to 3183 governing the enforcement of judgments in mortgage foreclosure.

Note: . . . The writs of levari facias provided by §44 of the Mechanics Lien Act of June 4, 1901, P. L. 431, 49 P.S. §181, . . . and similar acts are abolished.

* See Rule 3233 for Acts of Assembly not suspended relating to special stay provisions, sequestration of rents, upset price, sale clear of lien and preferences.

Rule 3233. Action upon Mechanics' Liens, Municipal Claims, Tax Claims and Charges on Land.

The rules governing the enforcement of a judgment in rem in an action or proceeding upon a mechanics lien, . . . shall not be deemed to suspend or affect:

(a) MECHANICS LIENS.

* (1) Section 39 of the Act of June 4, 1901, P. L. 431, 49 P.S. §201.

Note: This Section relates to sequestration of rents.

* (2) Section 47 of the Act of June 4, 1901, P. L. 431, 49 P.S. §184.

Note: This Section relates to right of tenants and purchaser after execution sale.

* The references to the Mechanics' Liens Act of 1901 are now obsolete in view of the repeal of that act by Section 901 of the Mechanics' Lien Law of 1963.

* (3) Sections 13, 55 and 56 of the Act of June 4, 1901, P. L. 431, 49 P.S. §§202, 203, 263.

Note: These sections relate to priority of distribution to use claimants, subcontractors and contractors.

* * *

Rule 3245. Action upon Mechanics Liens, Municipal Claims, Tax Claims and Charges on Land.

The following Acts of Assembly are suspended insofar as they apply to the practice and procedure in enforcement of judgments in rem in an action or proceeding upon a mechanics lien, . . . :

* (1) Section 44 of the Act approved June 4, 1901, P. L. 431, 49 P.S. §181.

Note: This section relates to the form of writ of execution.

* (2) The second sentence of Section 45 of the Act approved June 4, 1901, P. L. 431, 49 P.S. §183.

Note: This section relates to execution upon structures situate in more than one county.

* * *

(7) And all other Acts or parts of Acts inconsistent with these rules to the extent of such inconsistency.

Rules 3180-3183 are as follows:

Rule 3180. Judgment. Execution.

Judgment shall be enforced by a writ of execution substantially in the form provided by Rule 3257.

Rule 3181. Conformity to Rules Governing Enforcement of Judgments for Payment of Money.

The procedure for the enforcement of a judgment shall be in accordance with the rules governing the enforcement of judgments for the payment of money with respect to the following:

(a) Commencement and Issuance of Writ:—Rules 3103(a), 3103(e) and 3105.

* The references to the Mechanics' Liens Act of 1901 are now obsolete in view of the repeal of that act by Section 901 of the Mechanics' Lien Law of 1963.

(b) Substitution, Reissuance and Expiration of Writ:—Rules 3106(a), 3106(b) and 3106(d).

(c) Security for Sheriff:—Rule 3116.

(d) Supplementary Relief in Aid of Execution:—Rule 3118, insofar as applicable.

(e) Abandonment of Levy:—Rule 3120.

(f) Notice of Sale, Stay, Continuance:—Rule 3129.

(g) Sale of Mortgaged Property Located in More than One County:—Rule 3131.

(h) Setting Aside Sale:—Rule 3132.

(i) Lien Creditors as Purchasers:—Rule 3133.

(j) Sheriff's Deed, Distribution of Proceeds:—Rules 3135 and 3136.

(k) Sheriff's Expenses and Fees, Recovery as Costs, Abandonment of Writ for Nonpayment:—Rule 3138.

(l) Sheriff's Return:—Rules 3139(a) (1), 3139(c) and 3139(d).

Rule 3182. Service of Writ. Levy.

Service of the writ shall be made by the sheriff noting upon the writ a brief description of the mortgaged property and a statement that he has levied upon defendant's interest therein.

Rule 3183. Stay of Execution. Setting Aside Execution.

(a) Execution shall be stayed as to all or any part of the property of the defendant

(1) upon written direction of the plaintiff to the sheriff;

(2) upon a showing of exemption or immunity of property from execution;

(3) upon a showing of a right to a stay under the provisions of an Act of Congress or an Act of Assembly.

(b) Execution may be stayed by the court as to all or any part of the property of the defendant upon its own motion or application of any party in interest showing

- (1) a defect in the writ or service; or
- (2) any other legal or equitable ground.

(c) In an order staying execution the court may impose such terms and conditions or limit the stay to such reasonable time as it may deem appropriate.

(d) The court may on application of any party in interest set aside the writ or service

- (1) for a defect therein; or
- (2) upon a showing of exemption or immunity of property from execution; or
- (3) upon any other legal or equitable ground.

(e) All objections by the defendant shall be raised at one time.

(f) After the termination of a stay, execution may proceed without reissuance of the writ.

Rules Cited by Rules 3180 and 3181 are as follows:

Rule 3257. Writ of Execution. Mortgage Foreclosure.

The writ of execution in an action of mortgage foreclosure shall be substantially in the following form:

[CAPTION]

WRIT OF EXECUTION

"Commonwealth of Pennsylvania }
 "County of..... }
 "To the Sheriff of.....County:

“To satisfy the judgment, interest and costs in the above matter you are directed to levy upon and sell the following described property:

.....
 (Specifically describe property)

Note: Description of property may be included in, or attached to, the writ.

Amount Due	\$.....
Interest from.....	\$.....
[Costs to be added]	\$.....

“.....
 (Name of Prothonotary (Clerk))
 “.....
 (Deputy)”

Seal of the Court

Date.....

Rule 3103. Commencement. Issuance.

(a) Execution shall be commenced by filing a praecipe for a writ of execution with the prothonotary of any county in which judgment has been entered.

* * *

(e) Upon issuance of the writ the prothonotary shall transmit it directly to the sheriff to whom it is directed or upon plaintiff’s request deliver it to the plaintiff or his representative for transmittal.

Rule 3105. Writ. Notation of Time of Receipt.

The sheriff shall note on the writ the date and time when he receives it.

Rule 3106. Substitution. Reissuance and Expiration of Writ.

(a) Upon praecipe stating that a writ has been lost or destroyed a substituted writ may be issued.

(b) A writ may be reissued at any time, and any number of times, by endorsement thereon by the prothonotary of the word "reissued."

* * *

(d) A writ shall not be served nor shall a levy or attachment be made thereunder after the expiration of ninety (90) days from the date of issuance or reissuance. After levy or attachment has been made under the writ within the ninety (90) day period it shall remain valid without further reissuance for the purpose of completing the pending execution proceedings under the levy or attachment.

Rule 3116. Security for Sheriff.

No bond or security shall be required by the sheriff except as provided by these rules.

Note: See Rule 3109(d) authorizing bond or security for cost of retaining or preserving property levied upon and Rule 3110(d) authorizing bond to indemnify depository upon the forcible opening of a safe deposit box.

Rule 3118. Supplementary Relief in Aid of Execution.

(a) On petition of the plaintiff, after notice and hearing, the court in which a judgment has been entered may, before or after the issuance of a writ of execution, enter an order against any party or person

(1) enjoining the negotiation, transfer, assignment or other disposition of any security, document of title, pawn ticket, instrument, mortgage, or document representing any property interest of the defendant subject to execution;

(2) enjoining the transfer, removal, conveyance, assignment or other disposition of property of the defendant subject to execution;

(3) directing the defendant or any other party or person to take such action as the court may direct to preserve collateral security for property of the defendant levied upon or attached, or any security interest levied upon or attached;

(4) directing the disclosure to the sheriff of the whereabouts of property of the defendant;

(5) directing that property of the defendant which has been removed from the county or concealed for the purpose of avoiding execution shall be delivered to the sheriff or made available for execution; and

(6) granting such other relief as may be deemed necessary and appropriate.

(b) The petition and notice of the hearing shall be served only within the Commonwealth in the manner provided by Rules 233(a)(1) and 233(a)(2) and (b).

(c) Violation of the mandate or injunction of the court may be punished as a contempt.

Note: Service of a writ of execution against a garnishee enjoins him as provided in Rule 3111 but supplementary aid may be obtained under this rule against any party or person without the necessity of separate proceedings in equity in aid of execution.

Rule 3120. Abandonment of Levy.

The sheriff may abandon the levy if

(1) the plaintiff fails to make payment promptly upon demand of the sheriff's proper fees and costs, or

(2) sale of the property levied upon is not held within six (6) months after levy, unless the proceedings are stayed or the time for sale is extended by the court.

Rule 3129. Notice of Sale. Real Property.

(a) Notice of the sale of real property shall be given by the sheriff by handbills posted in the sheriff's office and upon the property at least ten (10) days prior to sale, briefly describing the property to be sold, its location, the improvements, if any, the judgment of the court on which sale is being held, the name of the owner or reputed owner and the time and place of sale.

(b) Notice as provided in Subdivision (a) shall also be given by publication by the sheriff once a week for three (3) successive weeks in a newspaper of general circulation in the county and in

the legal publication, if any, designated by rule of court for publication of notices, the first publication to be made not less than twenty-one (21) days before the date of sale.

Note: See Note to Rule 3128 as to time, terms and conditions of sale. See also Rule 3131 as to advertisement where a parcel of real property extends across county lines.

(c) The notice of sale provided in Subdivisions (a) and (b) shall include a notice directed to all parties in interest and claimants that a schedule of distribution will be filed by the sheriff on a date specified by the sheriff not later than thirty (30) days after sale and that distribution will be made in accordance with the schedule unless exceptions are filed thereto within ten (10) days thereafter. No further notice of the filing of the schedule of distribution need be given.

(d) If the sale is stayed or continued or adjourned generally, new notice shall be given as provided by Subdivisions (a), (b) and (c). If the sale is continued or adjourned at the direction of the plaintiff to a date certain within forty-five (45) days, and public announcement of the adjournment and new date made to the bidders assembled at the time and place originally fixed for the sale, no new notice shall be required, but there may be only one such continuance or adjournment to a date certain without new notice.

(e) The court may by general rule or special order require additional notice to the defendant.

Rule 3131. Sale of Real Property Located in More than One County.

(a) Where real property to be sold in execution consists of an interest in a single tract of land which lies in more than one county, the writ shall be directed to the sheriff of one of those counties and the plaintiff shall file a petition with the court of that county for leave to sell the same at execution.

(b) The petition shall set forth

(1) a description of the real property;

(2) whether the property is severable and whether the portion within either county can be sold separately without prejudice to the remainder; and

(3) the estimated value of the property within each county and if the value in any county is insufficient to satisfy the judgment, a statement of how much of the property in adjoining counties is required to be included in the order of sale.

(c) The court may enter judgment upon the pleadings or take evidence by deposition or otherwise, shall decree the extent of the real property which shall be subjected to execution, describing it by metes and bounds, shall designate the place of sale, and shall control the distribution of the proceeds of sale.

Note: Section 12 of the Act of June 13, 1840, P. L. 689, 12 P.S. §2491, remains unsuspended insofar as it authorizes the court to apportion the proceeds for the satisfaction of liens. See Rule 3241(40).

(d) If the order of the court directs a sale to include land in another county, a copy of the pleadings and the order of the court shall be filed by the plaintiff in the office of the prothonotary of such other county and indexed therein. Notice of the sale shall be advertised in each county.

Rule 3132. Setting Aside Sale.

Upon petition of any party in interest before delivery of the personal property or of the sheriff's deed to real property, the court may, upon proper cause shown, set aside the sale and order a resale or enter any other order which may be just and proper under the circumstances.

Rule 3133. Lien Creditor as Purchaser.

Whenever real or personal property sold on execution is purchased by the plaintiff or any other lien creditor entitled to receive all or part of the proceeds of the sale, the sheriff upon proof of that fact shall accept on account of the purchase price the receipt of the purchaser up to the amount of the proceeds to which he is entitled. The sheriff may require payment in cash of all legal costs distributable from the proceeds of the sale.

Rule 3135. Sheriff's Deed to Real Property.

When the sheriff sells real property in execution, he shall, at the expiration of ten (10) days after the filing of the schedule of distribution, if no petition has been filed to set aside the sale,

execute and acknowledge before the prothonotary a deed to the property sold. The sheriff shall forthwith deliver the deed to the appropriate officers for recording and for registry if required. Confirmation of the sale by the court shall not be required.

Note: The Acts of Assembly providing for correction of defective execution of the deed, defective return or errors or misdescriptions remain unsuspending by these rules. Acts of June 16, 1836, P. L. 755, §104, 12 P.S. §2543, April 21, 1846, P. L. 430, 12 P.S. §2544 and June 24, 1895, P. L. 246, 12 P.S. §2545.

Rule 3136. Distribution of Proceeds.

(a) Not later than thirty (30) days after the sale of real property and not later than five (5) days after the sale of personal property, the sheriff shall prepare a schedule of proposed distribution of the proceeds of sale which shall be kept on file and shall be available for inspection in his office. No schedule of distribution or list of liens need be filed when the property is sold to the plaintiff for costs only.

(b) When a receipt of the plaintiff or other lien creditor has been accepted on account of the purchase price the schedule shall set forth his name and address, the amount of his judgment or lien, identifying it, and the amount of credit claimed and allowed upon the purchase price.

(c) In sales of real property the sheriff shall attach to the schedule a list of liens upon the property sold as certified to him from the record by the proper officers or a guaranteed search from any title company authorized to do business within the county. The cost of certifying the list of liens or the title search, the acknowledgment, recording and registry of the deed and transfer or documentary stamps shall be charged as an expense of distribution.

(d) The sheriff shall distribute the proceeds of sale in accordance with the proposed schedule of distribution, unless written exceptions are filed with him not later than ten (10) days after the filing of the proposed schedule.

(e) Upon the filing of exceptions with the sheriff he shall transmit them to the prothonotary together with a copy of the proposed schedule of distribution.

(f) The court shall determine the exceptions, and for this purpose may receive evidence by deposition or otherwise, or may appoint an auditor to hear the evidence and report to the court.

(g) The proceeds of sale need not be paid into court by the sheriff but upon petition of the sheriff or any party in interest, the court may order the proceeds to be paid into court to await distribution or may order the sheriff to invest the fund for distribution pending final disposition of the exceptions or an appeal therefrom.

(h) If the sheriff receives any money for costs or in connection with a stay, adjournment or postponement of sale or otherwise, he shall account for it on returning the writ.

Rule 3138. Sheriff's Expenses and Fees. Recovery as Costs. Abandonment of Writ for Non-payment.

(a) The plaintiff shall pay to the sheriff all costs, charges and expenses incident to the execution, the maintenance of the lien of the execution and the preservation of the property. These items shall be deemed taxable costs for refund to the plaintiff from the proceeds of any sale, except that the plaintiff shall not be entitled to recover the costs in connection with writs determined by the court to be unnecessary and oppressive.

(b) If the plaintiff fails to make payment promptly upon demand of the sheriff's proper fees and costs, the sheriff shall be relieved of liability for loss, removal or distribution of the property and may return the writ as abandoned.

Rule 3139. Sheriff's Return.

(a) The sheriff shall make a return

(1) upon the completion or abandonment of the execution proceedings or if no sale is effected for want of buyers; . . .

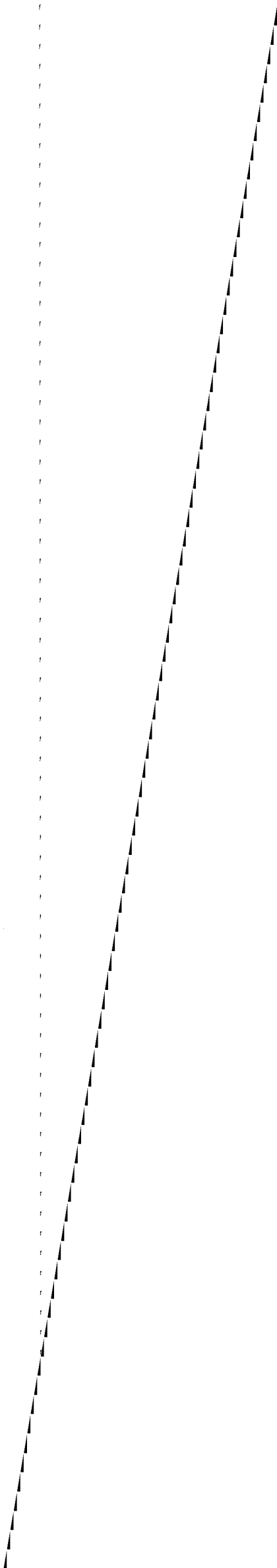
* * *

(c) The return of the sheriff shall be made to the prothonotary of the county in which the writ issued and shall include any schedule of distribution required under these rules.

(d) If real property is sold by the sheriff under a writ of execution from another county, a copy of the sheriff's return shall also be filed by him with the prothonotary of the county in which the real property is located.

APPENDIX C

Text of Sections of Act of 1901, as Amended,
Declared Unconstitutional



Text of Sections of Act of 1901, as Amended, Declared Unconstitutional

THE CONSTITUTIONAL PROVISION

Article III, Section 7 of the Pennsylvania Constitution of 1874, provides in part as follows:

“The General Assembly shall not pass any local or special law:

Authorizing the creation, extension or impairing of liens: ★ ★ ★

Regulating the practice or jurisdiction of, or changing the rules of evidence in, any judicial proceeding or inquiry before . . . tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate: ★ ★ ★

Nor shall the General Assembly indirectly enact such special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed:

Nor shall any law be passed granting powers or privileges in any case where the granting of such powers and privileges shall have been provided for by general law, nor where the courts have jurisdiction to grant the same or give the relief asked for.”

In construing the mechanics' lien law (Act of 1901, June 4, P. L. 431, as added and amended), the courts have held, as a general rule, that the act is unconstitutional insofar as it may attempt to go beyond the liability imposed upon an owner for improvements to his premises by the Act of 1840, April 28, P. L. 467, and that the statute must be generally so interpreted as to avoid such extension in order to make it constitutional: *Fluke*

v. Lang, 283 Pa. 54 (1925), 128 A. 663. Any provision of the act which is clearly divergent from, and is an advance upon, the law as it stood prior to the Constitution of 1874 must be regarded as invalid, as offending against Article III, Section 7 of the Constitution: *Sumption v. Rogers, No. 1*, 53 Pa. Superior Ct. 109 (1913), upheld on other grounds, 242 Pa. 348 (1913), 89 A. 121; *Davies v. Goldsborough*, 74 Pitts. 52 (1925). However, those provisions of the mechanics' lien law passed since 1874 which curtail the system of mechanics' liens existing prior to 1874 are valid; it is only those which attempt an advance upon that system which are violative of the constitutional prohibition: *Lobb v. Wheeler*, 37 Montg. 277 (1921).

The constitutional limitation is reinforced by the language of Section 61 of the Act of 1901, 49 P.S. §268, which provides that it is the legislative intent "that this act shall furnish a complete and exclusive system in itself, so far as relates to liens for labor and materials commenced to be furnished after its approval." This, the courts have held, was intended to give but one adequate remedy to each party interested in the claim and in the property affected by the proceedings: *Hiestand v. Keath*, 229 Pa. 149 (1910), 78 A. 40, reversing 42 Pa. Superior Ct. 403, and insofar as the statute would give any claimant a right which he did not possess prior to 1874, it is unconstitutional, since no special class of claimants may have any additional rights: *Silfies v. Austin*, 104 Pa. Superior Ct., 344 (1931), 158 A. 661.

TEXT AND REFERENCES

The Act of 1901, June 4, P. L. 431, intended to codify the law relating to mechanics' liens and repealed all or part of one hundred and seven predecessor acts dating back to 1806, plus all other acts and parts thereof, general, special or local, appertaining to the subject matter of the act. See also as to acts repealed, *Morgan Engineering Co. v. General Castings Co.*, 177 F. 347 (C.C.A. 1910). The Act of 1901 generally has been declared constitutional, except, as noted *supra*, insofar as specific provisions thereof attempt to extend the previous system.

Section 28 of the Act of 1901, relating to the right of attachment in suits for labor and materials, has been declared unconstitutional as in violation of Article III, Section 7 of the Constitution: *Sterling Bronze Co. v. Syria Improvement Association*,

226 Pa. 475 (1910), 75 A. 668; *Vulcanite Portland Cement Co. v. Allison*, 220 Pa. 382 (1908), 69 A. 855. Likewise, Sections 29 and 30 of the Act of 1901, relating to the form of writs of summons in attachment proceedings in accordance with Section 28, and therefore dependent upon Section 28, are unconstitutional. The three sections read as follows:

“Section 28. In any suit brought to recover for labor done, or labor or materials furnished, to a structure or other improvement, whether the contract shall have been recorded or not, the plaintiff, if he files of record at the time of beginning the suit an affidavit setting forth the facts, may summons also therein the owner or any other party indebted to the defendant for labor done, or labor or materials furnished, to such structure or other improvement; the effect of service of which writ, upon such third party, shall be to attach the moneys then or thereafter becoming due such defendant. If the defendant, at any time before verdict or judgment, shall file an affidavit that he does not owe plaintiff anything by reason of labor done, or labor or materials furnished, to such structure or other improvement, the summons against the garnishee shall be quashed by the court, upon motion, unless within fifteen days after notice and service of a copy of such affidavit the plaintiff enter approved security, in double the amount of his claim, conditioned that he will prosecute his suit with effect, or will pay all costs, damages and reasonable fees paid or suffered by the defendant, in case of his failure so to do.

“Section 29. Such writ of summons shall be in the following form:

“The Commonwealth of Pennsylvania,

“To the Sheriff of the County of ,
Greeting:

“Whereas, by affidavit filed of record in the court of common pleas of said county, as of Term, 1 , No. , it is averred by , plaintiff herein that , defendant herein, is

indebted to him for labor done or labor or materials furnished to the structure or other improvement therein set forth, and that....., garnishee herein, is indebted to said defendant for labor done or labor or materials furnished to the same structure or other improvement, and which indebtedness ought to be paid by the garnishee to the plaintiff and not to the defendant:

“Now, therefore, we command you that you notify the said defendant and the said garnishee, by service of a copy of this writ, that they are required to enter an appearance in the office of the prothonotary of said court, on or before the day of Anno Domini one, to answer the claims of said plaintiff, and to abide by and obey the judgment of said court. And have you then and there this writ.

“Witness the Honorable.....
President Judge of said court, this....day of.....
Anno Domini.....
.....Prothonotary.

“Section 30. Alias and Pluries writs may be issued if the preceding writs shall not have been served, and if the defendant be not found in the county the sheriff thereof may depute the sheriff of any other county in the Commonwealth to make service thereof upon such defendant. The procedure in such cases, if the defendant be served, shall be as in cases of summons and attachment execution, and, if he be not served, shall be as in cases of foreign attachment; but no such writ shall issue, nor shall any proceedings thereon be valid, unless it appears of record by the affidavit filed that the suit is brought against the defendant to recover for labor done, or labor or materials furnished, to a structure or other improvement therein named; and it shall be a complete defence to said suit that nothing is due the plaintiff upon that account.”

Section 38 of the Act of 1901, authorizing sale of structure or improvement apart from the land, has been held unconstitutional as in violation of Article III, Section 7 of the Constitu-

tion: *Henry Taylor Lumber Co. v. Carnegie Institute*, 225 Pa. 486 (1909), 74 A. 357. The section reads as follows:

“Section 38. Any claimant for an entirely new erection and construction of a structure or other improvement, having recovered judgment upon his claim, may, except where the property named is essential to the business of a quasi-public corporation, file a petition in the court in which such claim is filed, setting forth that the party contracting for the structure or other improvement was not capable of binding the land, has forfeited or otherwise lost all interest therein, that the prior estate, charges and encumbrances exceed the value of the land, or that by reason of any other facts in said petition averred, it is advantageous to the lien-claimants that the structure or other improvement should alone be sold for the benefit of the claimants; whereupon a rule shall be granted upon all parties interested, having filed or being entitled to file claims upon the defendants therein, and upon every person having an interest in the property, including the then owner and any ground-rent owner, mortgagee, lien-claimant or encumbrancer, to show cause why the prayer of the petition should not be granted. From the pleadings, aided as to the material disputed facts, if any, by depositions or a hearing at bar, the court shall determine the questions raised; and if it is decided that it would be advantageous to the claimants to have the structure or other improvement alone sold, then the court shall enter a decree, upon equitable terms, that the land upon which the structure or other improvement stands shall be exonerated from the lien of the claims, and the structure or other improvements shall alone be sold to pay the claims, unless the owner shall, within a time fixed, pay all claims that have ripened into final judgment, and give approved security to pay all subsequent judgments recovered thereon, the lien of such claims to remain in the meantime; or, unless within such time he shall, by writing filed, agree to pay into court for the benefit of the claimants, and of himself in case of a surplus, the appraised value of the structure or other improvements, as determined by a majority of three appraisers, selected by the parties or appointed by the court. If the structure or other improvement is alone sold, only those who

labored thereupon or furnished labor or materials thereto, shall be entitled to come in on the fund realized at the sale, and the purchaser thereat shall have sixty days within which to remove the same from the land which was exonerated from the claim."

Section 46 of the Act of 1901, relating to execution against property of quasi-public corporations, has been declared unconstitutional as special legislation: *Vulcanite Paving Co. v. Philadelphia Rapid Transit Co.*, 220 Pa. 603 (1908), 69 A. 1117. The section reads as follows:

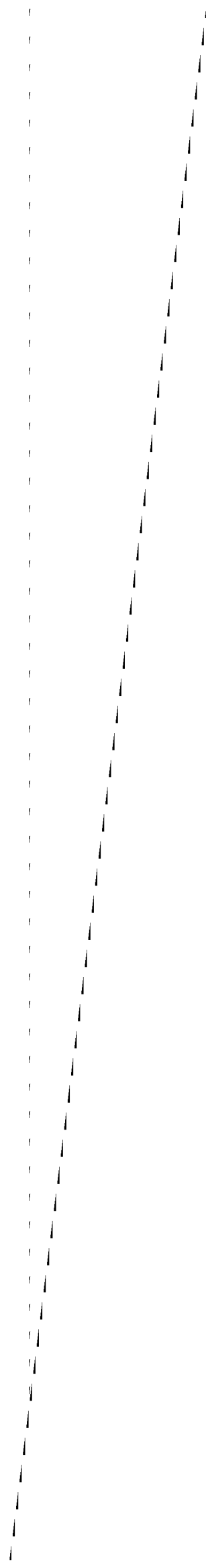
"Section 46. Where judgment is recovered upon any claim, the property named in which is essential to the business of a quasi-public corporation, the claimant shall have execution thereupon as in other cases of judgments against such corporations. Upon the distribution of any fund realized by a sale of the franchises and the whole or any part of the assets of the corporation, the court shall determine the relative value of the whole improvement to the property, to recover from part or all of which the claim was filed, and the claim shall be preferred with other such claims, to the extent that the value thus determined bears to the whole value of the franchises and assets sold."

The Act of 1903, April 22, P. L. 255, amending Section 6 of the Act of 1901, and providing a method for recovering for labor and material furnished for public improvements in lieu of a mechanic's lien, has been declared unconstitutional: *Smith's Appeal*, 241 Pa. 336 (1913), 88 A. 491. It reads as follows:

"Section 6. Where labor or materials are furnished for any structure or other improvement for purely public purposes, in lieu of the lien given by this act, any sub-contractor who has furnished labor or materials thereto may give a written and duly sworn notice to the Commonwealth, or any division or subdivision thereof, or any purely public agency thereunder, being the owner of the structure or other improvement, setting forth the facts which would have entitled him to a lien as against the structure or other improvement of a private owner; whereupon, unless such claim

be paid by the contractor, or adequate security be given or have been given to protect all such claimants, the Commonwealth or the division or subdivision thereof, or purely public agency thereunder, shall pay the balance actually due the contractor into the court of common pleas of the county in which the structure or other improvement, or the principal part thereof, is situate, for distribution to such parties as would be entitled thereto were it paid into court in the case of a private owner; and the Commonwealth hereby does, and any division or subdivision thereof, or any purely public agency thereunder, may, require that any contract for public work shall, as a condition precedent to its award, provide for approved security to be entered by the contractor to protect all such parties. If a dispute arises as to the balance actually due, the amount admitted shall be paid into court, and a suit brought to recover the disputed part, in the name of the contractor to the use of the parties interested, and any amount recovered shall be distributed as above set forth."

The Act of 1909, May 6, P. L. 441, relating to liens for labor or materials on public improvements, has been held unconstitutional: *Sax v. School Dist.*, 237 Pa. 68 (1912), 85 A. 91, as special legislation.



APPENDIX D

Cross Reference Tables

These tables compare the Act of 1901, June 4, P. L. 431, as amended, with the Mechanics' Lien Law of 1963. Text of the Act of 1901 may be found at pages 33-65. Text of those sections of the Act of 1901 and its amendments which have been declared unconstitutional may be found at pages 87-95.

Cross Reference Table I

ACT OF 1901		ACT OF 1963	
Sections of the Act	49 Purdon's Statutes §	Sections of the Act	49 Purdon's Statutes §
1	1	"Structure, etc."	201(1) 1201(1)
1	2	"Owner"	201(3) 1201(3)
1	3	"Contractor"	201(4) 1201(4)
1	4	"Subcontractor"	201(5) 1201(5)
1	5	"Claimant"	201(6) 1201(6)
1	6	"Property"	201(2) 1201(2)
—	—	"Materials"	201(7) 1201(7)
—	—	"Completion of work".....	201(8) 1201(8)
—	—	"Labor"	201(9) 1201(9)
—	—	"Alteration and repair"....	201(11) 1201(11)
2	21	"Work included"	201(12) 1201(12)
—	—	"Prothonotary"	201(13) 1201(13)
2	21	Right to lien.....	301 1301
2	22	Property not subject.....	303(b) 1303(b)
2	23	Lien for alterations; notice.	301, 501(a) 1301, 1501(a)
2	24	Improvement by tenant....	303(d) 1303(d)
3	25	Curtilage	201(2), 304 1201(2), 1304
3	26	Erection and construction..	201(10) 1201(10)
3	27	Presumption of use.....	302 1302
4	28	Ratification	* 1407
5	29	Bad faith.....	407 1407
6		Lien on balance.....	**
7	51	Rule to file claim.....	506 1506
8	101	Subcontractor's notice	501(b) 1501(b)
9	102	Right of owner.....	601, 602 1601, 1602
9	103	Payment by owner.....	604 1604
9	104	Assignment of claim.....	* 1603
9	105	Duty to defend.....	603 1603
10	52	Time for filing, etc.....	502, 701(b), 1502, 1701(b), 701(d), 706 1701(d), 1706
11	53	Contents of claim	503 1503

* Omitted as unnecessary.

** Omitted as unconstitutional.

*** Act of 1933, May 22, P. L. 845, §§1-9.

† Act of 1935, July 12, P. L. 667, §1.

ACT OF 1901		ACT OF 1963	
Sections of the Act	49 Purdon's Statutes §	Sections of the Act	49 Purdon's Statutes §
12	54	Consolidation of claims....	306 1306
12	55	Apportionment	306 1306
13	203n	Conveyance before lien	303(c), 508, 1303(c), 1508, 509 1509
13	203n	Priority over advance money mortgages	**
14	30	Petition for stay	*
14	31	Division of tract.....	706(c) 1706(c)
†	32	Commercial lien	303(e) 1303(e)
15	71	Waiver of claim	401 1401
15	72	Proof of waiver.....	402 1402
15	73	Credit or security.....	404 1404
15	74	Release as waiver.....	403 1403
16	75	Payment other than in legal tender	406 1406
17	76	Right to limit claim.....	405 1405
18	77	Effect of waiver.....	402 1402
19	78	Right to rescind.....	406 1406
19	79	Noncomplet'n without fault.	305 1305
20	80	Effect of bankruptcy, etc....	*
21	131	Notice of filing claim.....	502(a)(2),(c) 1502(a)(2),(c)
22	132	Substitution	**
23	133	Trial of facts.....	*
24	134	Intervention	*
25	135	Discharge of lien.....	505, 510 1505, 1510
26	56	Assignment of claim	*
27	57	Removal of structure.....	307 1307
28	1n	Attachment of balance....	**
29	1n	Summons in attachment....	**
30	1n	Service; summons	**
31	136	Rule to issue Sci. Fa.	Governed by RCP
32	151	Form of Sci. Fa.	Governed by RCP
33	152	Service of Sci. Fa.	Governed by RCP
34	153	Default judgment	Governed by RCP
34	154	Judgment on record.....	Governed by RCP
35	155	Judgment against contractor	**
35	156	Proceedings upon payment.	604(1) 1604(1)
36	157	Defenses	701(e) 1701(e)
36	158	Discovery	Governed by RCP
37	159	Compulsory nonsuit	Governed by RCP
38	1n	Sale of structure	**
39	201	Sequestration	Governed by RCP
40	221	Revival of judgment.....	705 1705
40	222	Amicable Sci. Fa.	705 1705

ACT OF 1901		ACT OF 1963	
Sections of the Act	49 Purdon's Statutes §	Sections of the Act	49 Purdon's Statutes §
41	223	Service of Sci. Fa. to revive.	705 1705
42	224	Sci. Fa. practice.....	705 1705
43	241	Indexing	507 1507
44	181	Execution—Lev. Fa.	Governed by RCP
45	182	Title on sale.....	*
45	183	Site in more than 1 county..	701(c) 1701(c)
46	1n	Execution against quasi-public corporations	**
47	184	Sale of Leaseholds.....	*
48	160	Stay of sale.....	*
48	160	Security	510 1510
***	162	Sci. Fa. affidavit.....	Governed by RCP
***	163	Service of affidavit.....	Governed by RCP
***	164	Admissions	Governed by RCP
***	165	Affidavit of defense.....	Governed by RCP
***	166	Grounds to quash.....	Governed by RCP
***	167	Grounds to strike.....	Governed by RCP
***	168	Judgment on default.....	Governed by RCP
***	169	Motion for judgment.....	Governed by RCP
***	170	Judgment on record.....	Governed by RCP
49	261	Insurance money	**
50	242	Approval of security.....	510 1510
51	243	Amendment	504, 701(a) 1504, 1701(a)
51	244	Extension of time.....	701 1701
52	245	Procedure	701 1701
52	246	Findings of fact.....	Governed by RCP
53	247	Service	Governed by RCP
54	262	Satisfaction or discharge...	704 1704
55	202	Distribution	*
56	263	Priority in distribution.....	*
57	264	Receipt required	*
58	265	Judgment as bar	702 1702
59	266	Appeals	703 1703
60	267	Effective date.....	802 1802
—	—	Limitation of lien.....	303(a) 1303(a)
—	—	Procedure for contesting claim; preliminary objections	505 1505
—	—	Discharge of lien	510(b),(c),(d) 1510(b),(c),(d)
—	—	Service of notice.....	602(c) 1602(c)
—	—	Property in more than one county	701(c) 1701(c)
61	268	Purpose of act.....	—

Cross Reference Table II

ACT OF 1963			ACT OF 1901	
Sections of the Act	49 Purdon's Statutes §		Sections of the Act	49 Purdon's Statutes §
101	1101	Short title	—	—
201	1201	Definitions:		
201(1)	1201(1)	“Improvement”	1	1
201(2)	1201(2)	“Property”	1	6
201(3)	1201(3)	“Owner”	1	2
201(4)	1201(4)	“Contractor”	1	3
201(5)	1201(5)	“Subcontractor”	1	4
201(6)	1201(6)	“Claimant”	1	5
201(7)	1201(7)	“Materials”	—	—
201(8)	1201(8)	“Completion of the work”	—	—
201(9)	1201(9)	“Labor”	—	—
201(10)	1201(10)	“Erection and construction”	3	26
201(11)	1201(11)	“Alteration and repair”	—	—
201(12)	1201(12)	“Work included”	2	21
201(13)	1201(13)	“Prothonotary”	—	—
301	1301	Right to lien; amount	2	21
302	1302	Presumption on materials	3	27
303	1303	Lien not allowed:		
303(a)	1303(a)	Persons not contractors, etc.	—	—
303(b)	1303(b)	Public purpose	2	22
303(c)	1303(c)	Conveyance prior to lien	13	203n
303(d)	1303(d)	Leasehold premises	2	24
303(e)	1303(e)	Security interests	†	32
304	1304	Excessive curtilage	3	25
305	1305	Noncompletion of work	19	79
306	1306	Consolidation or apportionment ..	12	54, 55
307	1307	Removal of improvement	27	57
401	1401	Waiver of lien by claimant	15	71
402	1402	Waiver by contractor; effect	15, 18	72, 77
403	1403	Release as waiver	15	74
404	1404	Effect of credit, collateral	15	73
405	1405	Right to limit claims	17	76
406	1406	Right to rescind	16	75
			19	78
407	1407	Contracts not in good faith	5	29
501	1501	Notices by subcontractor:		
501(a)	1501(a)	Preliminary notice	2	23
501(b)	1501(b)	Formal notice	8	101
501(c)	1501(c)	Contents of formal notice	—	—

† Act of 1935, July 12, P. L. 667, §1.

*** Act of 1933, May 22, P. L. 845, §§1-9.

<u>ACT OF 1963</u>			<u>ACT OF 1901</u>	
Sections of the Act	49 Purdon's Statutes §		Sections of the Act	49 Purdon's Statutes §
501(d)	1501(d)	Service of notice.....	2, 8	23, 101
502	1502	Filing and notice of claim:		
502(a)	1502(a)	Perfection of lien	10	52
502(b)	1502(b)	Venue; more than one county...	11	53
502(c)	1502(c)	Service	21	131
503	1503	Contents of claim.....	11	53
504	1504	Amendment of claim.....	51	243
505	1505	Procedure for contesting.....	25	135
506	1506	Rule to file claim.....	7	51
507	1507	Indexing claims, etc.	43	241
508	1508	Priority of lien	13	203n
509	1509	Effect of forfeiture.....	13	203n
510	1510	Discharge of lien.....	25	135
			48	160
			50	242
601	1601	Owner's right to retain.....	8	101
602	1602	Notice to contractor.....	9	102
603	1603	Contractor's duties	9	103-5
604	1604	Owner's additional remedies....	9	103-5
701	1701	Procedure to obtain judgment:		
701(a)	1701(a)	Practice and procedure.....	***	162-170
701(b)	1701(b)	Time for commencing action...	10	52
701(c)	1701(c)	Venue	45	183
701(d)	1701(d)	Time for judgment; limitation..	10	52
701(e)	1701(e)	Defense to action on claim....	36	157
702	1702	Effect of judgment.....	58	265
703	1703	Appeal from judgment.....	59	266
704	1704	Satisfaction of claims.....	54	262
705	1705	Revival of judgment.....	10	52
			40-42	221-224
706	1706	Execution upon judgment:		
706(a)	1706(a)	Judgment essential to execution.	10	52
706(b)	1706(b)	Conformity to RCP.....	44	181
706(c)	1706(c)	Division of tract.....	14	31
801	1801	Severability	—	—
802	1802	Effective date.....	60	267

